No. 96-1577

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

STATE OF ALASKA,

Petitioner.

NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

In 1943, the Secretary of the Interior set aside a 1.8 million acre reservation in Alaska (less than one-half of one percent of the State's land area) to protect the hunting grounds of the Natives of Venetie and Arctic Villages ("Venetie Reservation"). Unlike almost all other Native villages in Alaska, the Natives of Venetie and Arctic Villages elected under section 19(b) of the 1971 Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601, 1618(b) ("ANCSA"), to acquire title to their existing reservation and thereby to forego any other land or economic benefits under the Act. The question presented is:

Whether the Ninth Circuit correctly held, based on the complete absence of language in ANCSA extinguishing Indian country in Alaska, that the Native Village of Venetie Tribal Government (which represents both Venetie and Arctic Villages) occupies Indian country and retains its inherent authority to tax business activities occurring within its territory in order to provide essential governmental services in an area not served by any other local government.

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INTRODUCTION

Nearly 800 miles north of Alaska's capital–above the Arctic Circle at the foot of the Brooks Range in a land as wild as any area in America–is the homeland of the Venetie Tribe of Neets'aii Gwich'in Indians. The Venetie people have governed, hunted and fished their land since time immemorial according to ancient tribal customs and traditions, in a society where children still speak Gwich'in as a first language and life still largely follows the migratory rhythms of caribou and salmon.

All of the Venetie area lands, a former reservation set apart for the Tribe, are owned by the Tribe in communal fee. All of the permanent residents are Venetie tribal members. But for a few school teachers, the only government employees are tribal employees. The Venetie Indians receive the same special Federal Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) programs (among others) available exclusively to reservation tribes, including support for their tribal council and tribal court, employment assistance, financial assistance, vocational assistance, housing assistance, road maintenance and construction, and comprehensive health care. These and other Federal programs are administered either by the Tribe itself or by intertribal organizations authorized by the Tribe to do so.

Petitioner necessarily agrees that Venetie is a federally recognized tribe, whose existence as a sovereign operates independently of whether its lands are technically a reservation. Pet. Br. 7 n.6, 12-13. Nonetheless, and despite the Tribe's supervision of all activities and persons within its territory, Alaska now argues that Venetie somehow lost its territorial jurisdiction over lands which today it exclusively owns and occupies.

To do this Alaska invents a false syllogism that renders much of its argument a diversion: State law is precluded in "Indian country;" state law has been generally applied in village Alaska; therefore, Venetie cannot occupy "Indian country." The State's recitation of both history and "Indian country" law is untenable. It is also largely beside the point.

This case concerns only the Venetie Tribe's authority in its tribal homeland to require that a company using lands owned

by the Tribe, whose activities both substantially burden and benefit from the tribal community, pay a local tax for the privilege of doing business on that tribal land. It does not, and never has, concerned whether the Tribe's jurisdiction is or is not concurrent with that of the State. Indeed, Venetie has readily conceded much of its jurisdiction is concurrent. Resp. Opp. to Cert. 13-14. As this Court's precedents attest, the status of tribal jurisdiction over Venetie's tribal lands–*this* case–is an entirely different question from the extent of State jurisdiction over that same area.

No other issue is implicated in this case. The decision below does not challenge the little state criminal law enforcement that reaches Venetie. It does not raise "uncertainty over basic questions of governmental authority and operations" in Venetie, Pet. Br. 46, for Venetie has always and without interruption governed its own affairs and those who come on to its lands. It does not encourage any other tribe to tax its own economic engine (its village corporation) "out of existence," for all the lands in question here are owned by the Tribe. It does not affect the State's tax revenues. It does not resurrect extinguished hunting and fishing rights. It does not jeopardize Alaska's generous 103 million acre land grant. It does not lead to some unpredictable expansion of Indian country beyond the conservative bounds already long established by all Circuits to have considered the matter. And it does not open the door to the creation of "Indian country" enclaves anywhere a tribe acquires land; as is the case here, the land *by definition* must be a part of a federally recognized tribe's home "community" and be treated as such by Congress.

COUNTER STATEMENT OF THE CASE

Factual and procedural background below

1a. The issue in this case comes as the last vestige of a prolonged controversy in which Alaska has vigorously contested the status of respondent as a federally recognized sovereign tribe

possessing inherent powers of self-government.[1] The following factual account is drawn primarily from the findings of the district court which the circuit court "accept[ed]...without objection." Pet. App. 26a n.5. Respondent Native Village of Venetie Tribal Government ("Tribe") is the federally recognized governing body of the Neets'aii Gwich'in, an Athabascan Indian tribe of some 350 enrolled members in 99 households who reside primarily in the two "distinctly native villages" of Venetie and Arctic Village. Pet. App. 109a, 124a; J.A. 124.

In 1938, the Neets'aii petitioned the Secretary of the Interior to set aside a portion of their vast aboriginal lands in Alaska as a reservation to protect their exclusive use and occupancy of the land. Pet. App. 115a; J.A. 107-122. Pursuant to a Secretarial election held under the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. §§ 461-494 (1948) *et seq.*, the Neets'aii ratified a constitution on January 25, 1940 and in 1943 the Secretary, acting under §§ 467, 473, 473a, withdrew the requested 1.8 million acre Venetie Reservation. Pet. App. 2a, 110a; J.A. 135-141. The Tribe's federally approved Constitution lists among its powers the rights "to stop any giving or taking away of Village lands or other property without its consent," and to "control the use by members or nonmembers of any reserve set aside by the Federal Government for the Village and to keep order in the reserve." J.A. 127. There are no non-Native communities within the Venetie territory, and the "Venetie [Reservation area], in particular, is not materially different today . . . from what it was when first observed [by non-Indians] in the early 1900s." Pet. App. 124a. All but a few residents of the area are Neets'aii tribal members.

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[1] This case was consolidated for trial with an earlier case concerning Alaska's refusal to accord full faith and credit to Venetie's and a neighboring tribe's tribal court orders, in violation of 25 U.S.C. § 1911(d). *Native Village of Venetie I.R.A. Council v. Alaska*, No. F86-075Civ. (D. Alaska), *on remand from* 944 F.2d 548 (9th Cir. 1991) *rev'g* 687 F. Supp. 1380 (1988). The cases were severed following the district court's decision of Dec. 23, 1994. Pet. App. 80a. Judgment was entered in the earlier case on Feb. 22, 1995 (declaring respondent a sovereign tribe and requiring Alaska to accord its tribal court decrees full faith and credit). J.A. 93. Alaska did not appeal from the final judgment entered Jan. 30, 1996, J.A. 94.

Id. 63a.

The Tribe governs the lands and people of the Neets'aii Gwich'in Tribe. Pet. App. 113a-121a; J.A. 92 ¶ 10; 85 ¶ 7; 61 ¶ 6; 67-68 ¶¶ 18, 19; 34 ¶ 23; 41 ¶ 7; 37-38 ¶¶ 7, 9; 81-82 ¶¶ 13, 14; 78 ¶ 11; 72 ¶ 10. At the same time, local village councils in each village carry out functions of day-to-day law and order, furnish local utilities, and handle other matters delegated to the village councils by the central Tribal Government. J.A. 92 ¶ 10; 42 ¶ 8; 82 ¶ 15; 68 ¶ 19. Together, the tribal and village councils maintain the peace, enforce the tribal ban on alcohol, and provide for the general welfare of all inhabitants. J.A. 47 ¶ 12; 68 ¶ 20; 81-82 ¶¶ 13, 16.

b. The only state employees in the Tribe's two villages are schoolteachers. Pet. App. 109a. There are no state troopers, judges or magistrates; no state courts, prosecutors or public defenders; and no other state employees. Nor is there any local state-chartered government in the area.

c. The Tribe is a member of Tanana Chiefs Conference, Inc. (TCC), an intertribal consortium of 43 tribes in interior Alaska. J.A. 52, ¶ 7. Partly on its own and partly through TCC, the Tribe administers its share of virtually all federal Indian services available to tribes in Alaska, pursuant to the Indian Self-Determination Act. J.A. 54-57.

d. In the late 1960s the Neets'aii learned of an imminent threat to their Reservation: a proposed land claims settlement which might terminate all reservations in Alaska, and turn over all Native lands to state municipal governments. Pet. App. 116a. The Neets'aii viewed the proposal as a direct threat to their land base. *Id.* In response, the Tribe successfully sought an amendment that would allow it to retain title to its 1943 Reservation lands.[2]

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[2]Petitioner repeatedly casts aspersions on Venetie's efforts to retain the lands protected by its 1943 Reservation, claiming that at every turn Venetie has been rebuffed. Not so. In 1969, Venetie expressed concern with a bill under which all local lands would have gone to state municipal governments, not tribes or Native corporations. H.R. 91-10193 (1969). The proposal permitted only the Tyonek Tribe of the Moquawkie Reservation to retain its reservation lands. *Id.* § 15. Venetie asked to be treated the same. Ex. 68, Dkt.Nr. 115,

(continued...)

Id.

While the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1618(a), revoked "the various reserves set aside" for Alaska Natives by prior legislation or executive action, § 1618(b) allowed tribes such as Venetie to secure fee title to their former reservation lands in lieu of sharing in the monetary, land, regional corporation, and other provisions and obligations of the Act. On November 10, 1973, the Tribe selected this option, Pet. App. 116a, and decided "against joining in ANCSA other than to take title to their historic lands." *Id.* 119a n.58. The United States then conveyed the Reservation lands in a unitary conveyance to the two village corporations for Arctic Village and Venetie in fee simple as tenants in common. *Id.* 117a. In 1979 the tribal membership, acting through the two village corporations, reconveyed their Reservation lands to the Tribe. *Id.* The two village corporations then dissolved. *Id.* The Venetie Tribe was one of only six Alaska tribes to select the option afforded by § 1618(b) to retain its former Reservation, and it is the only tribe which used its village corporations solely as a vehicle to retain communal fee title to the Reservation in the tribal government.

e. In 1986, pursuant to a duly adopted ordinance imposing a business-activity tax,[3] the Tribe assessed and sought to collect a gross-receipts tax from a private contractor engaged in a school construction project on tribal lands pursuant to a contract with the regional school district.[4] After payment was refused and the

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[2](...continued)
p. 171(tribal resolution asking to be "included as well as the Tyonek Indians...[so as to] give them a chance to make up their minds on keeping or losing their reservation.") In the next Congress, §15 of H.R. 92-10367 (1971), was revised to authorize any reservation tribe to retain its reservation lands, a provision adopted in conference. S. Conf. Rep. 92-581, 46 (1971).

[3] The ordinance was initially adopted in 1978 (Ex.103, Dkt.Nr. 114, p. 104) and was amended in May 1986 (Ex.141, Dkt.Nr. 118, p. 198), the amendments being modeled on the Navajo ordinance upheld in *Kerr-McGee Corp. v. Navajo Tribe*, 471 U.S. 195 (1985).

[4] In 1982, the Tribe granted a 55-year license to the Yukon Flats School District to occupy and use the high school and grade school sites and related facilities

(continued...)

Tribe brought suit in its Tax Court, the Alaska Attorney General informed the Tribe that the State had agreed with the private contractor to assume responsibility for, and defend against, the Tribe's tax-collection efforts.[5] Ex. 146, Dkt.Nr. 109. Rather than appear and defend in tribal court, the State, on its own behalf and on behalf of the school district and the contractor brought this action in federal court. J.A. 11. The district court granted a preliminary injunction against further tribal enforcement efforts and the Ninth Circuit affirmed, holding that the validity of the tribal tax turned on whether the Tribe is a federally recognized sovereign occupying a "dependent Indian community" within the meaning of 18 U.S.C. § 1151(b). Pet. App. 137a-138a.

f. Following trial and the district court's conclusive judgment that respondent is a sovereign Indian tribe whose judicial *decrees the* State must respect, *supra* at 3, n.1, the court separately concluded that up "[u]ntil 1971... the Neets'aii Gwich'in were

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[4](...continued)
in Arctic Village, and the high school site in the village of Venetie–all located on lands owned in fee by the Tribe. Ex. 124, Dkt.Nr. 109. (The license agreement expressly made the Tribe's 1978 tax ordinance applicable.) In December 1984–in conjunction with the transfer of operation of the Venetie village grade school from the BIA to the school district, and in anticipation of the school construction project underlying the instant controversy–the Tribe entered into a 50-year lease agreement with the school district and the Alaska Department of Education pertaining to additional tribal lands to be used for public school purposes. Ex. 133, Dkt.Nr. 114, p. 102. The Tribe continued to maintain and administer all local government services available to the construction contractor, including the airport, roads, utilities, local law enforcement, garbage disposal, and water and sewage disposal.

[5] The actual agreement between the State and the private contractor concerning ultimate tax liability is not in the record. *See* Ex. 140, Dkt.Nr. 109 (construction contract between contractor and school district, containing no such language). However, the State has alleged throughout this litigation that it assumed liability for the tax. *E.g.*, Pet. Br. ii; J.A. 9-10, 14. Whether such a voluntary assumption of liability shifts the legal incidence of the tax from the private party to the State, *cf. United States v. California*, 507 U.S. 746 (1993); *United States v. New Mexico*, 455 U.S. 720 (1982), or confers upon the State a valid defense to the tax, *cf. Regents of Univ. of Calif. v. Doe*, 117 S. Ct. 900, 903 (1997) ("'[T]he question is not who pays in the end . . . [but] who is legally obligated to pay.'") remains to be explored on remand. Pet. App. 32a.

treated by Congress and the Executive agencies as being subject to active superintendence to such a degree as to amount to a dependent Indian community for purposes of 18 U.S.C. § 1151(b)." Pet. App. 67a. The district court held, however, that ANCSA had implicitly extinguished the Tribe's dependent Indian community status. *Id.* 71a.

g. On appeal, a unanimous panel reversed. It concluded that "ANCSA did not extinguish Indian country in Alaska, and . . . Venetie, having demonstrated that it qualifies as a dependent Indian community, occupies its territory as Indian country." *Id.* 32a. Judge Fernandez wrote separately, expressing unease but concurring in the result that "ANCSA did not eliminate Indian country in Alaska .... I agree that Venetie's territory is Indian country, if any still exists in Alaska." *Id.* 36a. The Court of Appeals remanded, expressly reserving judgment on the validity of the Tribe's tax. *Id.* 32a.

Historical and legal background of Alaska Native Tribes

2a. Alaska is home to 225 federally recognized Native American tribes, including the Venetie Tribe.[6] Like Venetie,

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[6] In 1993, the Federal Government published a list of the 225 Alaska villages recognized as sovereign self-governing tribes, 58 Fed. Reg. 54,364 (Oct. 21, 1993) (republished in 1995 and 1996), a political determination within the exclusive province of Congress and the Executive. *United States v. Holiday*, 70 U.S. (8 Wall.) 407, 419 (1865). (The five states cited for geographic comparison (Pet. Br. 4) contain 189 tribes.) In 1994, Congress ratified the Secretary of the Interior's authority to issue the list. 25 U.S.C. § 479a. Also in 1994, Congress prohibited any federal classification that would diminish "the privileges or immunities [of one or more tribes]...relative to other federally recognized tribes." 25 U.S.C. § 476(f).

As their tribal recognition reflects, Alaska Native villages have governed their communities long before and after the 1867 Alaska Purchase. *See, e.g.*, H.D. Anderson & W.C. Eells, *Alaska Natives: A Survey of their Sociological and Educational Status* 31-50, 144-50 (1935) (commissioned by the U.S. Dep't. of Education in developing 1936 Alaska amendments to the IRA, 25 U.S.C. § 461 *et seq.*); *Handbook of North American Indians* 5(*Arctic*) and 6 (*Subarctic*) (discussing "Gwich'in" or "Kutchin" in v. 6 at 514-24); D. Case, *Alaska Natives and American Laws* 333, 361-62 (1984)("Case")(lodged with Clerk); F. Cohen, *Handbook of Federal Indian Law* 750-52 (1982)("Cohen");
(continued...)

many of these tribes remain in possession of their ancestral lands, governed locally only by their tribal governments.

b. Since the Territory's purchase, Alaska Native tribes have been under the same legal regime applicable to all other Native American tribes. As Article III of the 1867 Treaty of Cession put it: "The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country." 15 Stat. 539, 542, *infra*, 1a. That provision has long been held to apply the whole body of federal Indian and statutory law to the "uncivilized tribes of Alaska." *In re Minook*, 2 Alaska 200, 220-21 (D. Alaska 1904); *see also Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 285 (1955) (noting "no distinction between use of the land [by Alaska Natives] and that of the Indians of the Eastern United States."). As a consequence, courts early on upheld the obligation of the Federal Government–identical to the Government's obligation elsewhere–to eject non-Natives when encroaching on aboriginal village lands. *United States v. Berrigan*, 2 Alaska 442 (D. Alaska 1905); *United States v. Cadzow*, 5 Alaska 125 (D. Alaska 1914); *see also Nagle v. United States*, 191 F. 141, 142 (9th Cir. 1911); *Johnson v. Pacific Coast S.S. Co.*, 2 Alaska 224, 241 (D. Alaska 1904).

The presence of Indian country is not new to Alaska. These rulings, omitted from petitioner's historical review, reflect the contemporaneous understanding of Secretary of State Seward. He advised both President Johnson's Cabinet in 1867 and the Secretary of War in 1869 that Alaska Native tribes, as "dependent nations under the protection of their government," inhabited "Indian country" under the 1834 Indian Trade and Intercourse Act, 4 Stat. 729."[7]

(...continued)
Alaska Natives and the Land (1968) (discussing Gwich'in at 205-07); E. Smith & M. Kancewick, *The Tribal Status of Alaska Natives*, 61 U. Colo. L. Rev. 455 (1990) ("Smith & Kancewick").

[7] D. Miller, *The Alaska Treaty* 71 (1981) (Cabinet memo); H.R. Ex. Doc. 135, 44th Cong. (1876) (War Department analysis and excerpt of Seward 1869 (continued...)

Given this history, Oregon-based Judge Deady's contrary views three years later–spotlighted by petitioner–were a bolt out of the blue. *See United States v. Seveloff*, 27 F. Cas. 1021 (D. Or. 1872) (holding 1834 Act only applied east of the Rocky Mountains). Congress promptly reversed Judge Deady by amending the 1834 Act to specifically apply the "Indian country" liquor control provisions to Alaska. Act of Mar. 3, 1873, ch. 227, 17 Stat. 510, 530. The Army and the Attorney General, too, rejected Judge Deady's views and continued to deal with Alaska as "Indian country" for some time. Harring 215-16. At the same time, federal officials respected the authority of Alaska tribal governments to administer their own affairs.[8] *Id.*

c. In this century both the Executive and Congress have expressed the view that Alaska Native tribes and their members enjoy the same privileges, rights, and immunities as other Native American tribes. By the 1930s (and continuing thereafter) the Department of the Interior resolved a multitude of legal issues involving Alaska Native tribes by consistently adhering to this

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[7](...continued)
correspondence); Case 58-59; S. Harring, *Crow Dog's Case* 212-14 (1995) ("Harring") (copy lodged with Clerk).

[8] Despite Judge Deady's initial unease over his own conclusion, *Seveloff*, 27 F. Cas. at 1024, he continued after the 1873 Act to insist that other Indian trading prohibitions remained inapplicable, *Waters v. Campbell*, 29 F. Cas. 411 (D. Or. 1876). Oddly, he ruled a different provision of the 1834 Act *did* apply to Alaska. *In re Carr*, 5 F. Cas. 115 (D. Or. 1875). Unlike petitioner, modern courts have criticized Judge Deady's decisions, one court terming them "superannuated." *E.g., Native Village of Venetie v. Alaska*, 944 F.2d 548, 558 (9th Cir. 1991). Commentators have also characterized Judge Deady's decisions as reflecting his own parochial, even racist, views of the proper place of Natives in American society and to the perceived negative effect of Native claims on economic development and trade. *See* Harring 214-16; Note, *"The True Interests of A White Population:" The Alaska Indian Country Decisions of Judge Matthew P. Deady*, 21 NYU J. Int'l L. & Pol. 195 (1988); Harring, *The Incorporation of Alaskan Natives under American Law; United States and Tlingit Sovereignty, 1867-1900*, 31 Ariz. L. Rev. 289, 301-02 (1989); Smith & Kancewick, 61 U. Colo. L. Rev. at 503 n.277. In one case, Judge Deady rejected aboriginal claims as "against the true interests of a white population." *United States v. Bridleman*, 7 F. 894, 896 (D. Or. 1881).

view.[9] And in 1934, Congress included the tribes inhabiting the Territory in the Indian Reorganization Act, 25 U.S.C. §§ 461-473 (IRA), *infra* 7a-14a. When the IRA's provisions proved unworkable in Alaska, *inter alia*, because the Secretary lacked the power to establish reservations out of the public domain (as well as drafting errors in the 1934 Act), Congress corrected the IRA. The amended IRA also assured Alaska tribes the right to reorganize irrespective of their residency on a formal reservation. Act of May 1, 1936, ch. 254, 49 Stat.1250, 25 U.S.C. §§ 496 (repealed 1976), 473a.

d. Congress has never terminated the Federal trust responsibility to Alaska tribes. In 1948, Congress responded to requests from Alaskan commercial fishing, mining, and other non-Indian interests by convening extensive hearings on proposals to repeal the Secretary's authority to designate reservations in Alaska, to rescind reservations which had already been created and to transfer the administration of Indian affairs to the Territory.[10] These measures were rejected, though they occasioned close congressional scrutiny of the Interior Department's Alaska reservation policy and the entire question of Alaska Native land claims and tribal governmental status.

With respect to tribal governmental authorities, Assistant Secretary Warne reviewed a long judicial and administrative course of dealings treating Alaska tribes on an equal footing with all other Native American tribes, including a Justice Department

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[9] 54 Int. Dec. 39 (1932); 53 Int. Dec. 593 (1932); 50 Pub. Lands Dec. 315 (1924); 49 Pub. Lands Dec. 592 (1923). *See also* 63 Int. Dec. 333 (1956); 60 Int. Dec. 142 (1948); *Alaska Natives Subject to Territorial School Tax* (Dep't of Int. Feb. 19, 1943) collected in 2 *Opinions of the Solicitor of the Int. Relating to Indian Affairs 1917-1974,* 1196; 58 Int. Dec. 1 (1942); 56 Int. Dec. 137 (1937).

[10] *Repeal Act authorizing Secretary of Interior to create Indian reservations in Alaska: Hearings on S.2037 and S.J. Res. 162 before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs*, 80th Cong. 24, 32 (1948) (letter from trader Noel C. Ross opposing Venetie Reservation "land grab") (1948) ("1948 Hearings").

opinion from later-Justice Van Devanter.[11] 1948 Hearings at 40-56. He corrected the oft-repeated misstatement (resurrected by Petitioner) that there were hardly any reservations in Alaska, observing there were already over 126 reservations, new petitions were pending under the IRA, additional petitions were anticipated, and prior Administrations had been criticized for failures to provide adequate protections. 1948 Hearings at 44-47, 50; *see also* Case 83-112 (Alaska federal reservation policies); *Hynes v. Grimes Pac. Co.*, 337 U. S. 86 (1949) (commercial fishing opposition to Alaska reservations); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78 (1918) (federal authority to regulate fishing within waters of the Annette Islands Reserve). As noted later in the committee reports on ANCSA, by 1950 "over 80 villages had petitions pending with the Secretary in which they asked that reserves be established for them under the [IRA]," S. Rep. No. 92-405, 91-93 (1971)("1971 Senate Report"), not the uniform opposition to reservations asserted by petitioner. Pet. Br. 4-5.

e. Three months after these historic 1948 hearings on the equal status of Alaska tribes, Congress enacted 18 U.S.C. § 1151, *infra*, 15a-16a codifying "Indian country" to include "all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state." 18 U.S.C. § 1151 (b). At the time, Alaska was the only such "subsequently acquired territory" then outside a state where the

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[11] This long course of dealing has continued in modern times. The Secretary of the Interior has certified and published several village tribal liquor ordinances pursuant to 18 U.S.C. § 1161, *see generally United States v. Mazurie*, 419 U.S. 544 (1975), expressly confirming the "Indian country" status of the enacting villages. *See* Br. *Amicus Curiae* Tanana Chiefs Conference Inc., at 20 n.18. During the same period the Department of Justice and the Internal Revenue Service have certified Alaska Native tribes (including the local councils for Arctic Village and Venetie) as exercising "substantial governmental functions" for purposes of law enforcement initiatives and various provisions of the Internal Revenue Code. *Id.* at 30. Other Federal agencies dealing with Alaska tribes have treated them on the same basis as tribes on formal reservations. *See* Br. of *Amici* Native Village of Tanana *et al.*, 22-25 filed in *Blatchford v. Noatak*, 501 U.S. 775 (1991).

term would likely still have application.

f. The presence of Indian country in Alaska has been judicially and legislatively confirmed. On the eve of Statehood, the District Court for Alaska held that the 1948 Indian country statute encompassed Alaska reservations such as the Tyonek Reserve, rendering its inhabitants subject only to federal criminal jurisdiction. *In Re McCord,* 151 F. Supp. 132 (D. Alaska 1957). Any doubts about the existence of Indian country in Alaska that might still have remained were decisively resolved when in 1958 Congress ceded to the Territory criminal and civil adjudicatory jurisdiction over "[a]ll Indian country within [Alaska]," by amending Public Law 280. Pub. L. No. 85-615, § 1, 72 Stat. 545 (1958), 18 U.S.C.§ 1162, 28 U.S.C.§ 1360. Congress's action confirmed the existence of Indian country in Alaska. It further recognized that state jurisdiction had often been applied in Alaska and it continued that practice.

Land Claims and the Alaska Native Claims Settlement Act

3a. Prior to statehood there was little focus on Alaska Native aboriginal lands. The 1867 Treaty had neither extinguished nor granted recognized title to any of the tribes' lands and thus had preserved the status quo, *Tee-Hit-Ton,* 348 U.S. at 278, a status maintained in the Organic Act of 1884, § 8, 23 Stat. 24; the Act of March 3, 1891, § 15, 26 Stat. 1095; and the Act of June 6, 1900, § 27, 31 Stat. 321, all of which left Alaska tribes undisturbed on their aboriginal lands. *Infra.* 1a-3a. Although occasionally the President or the Secretary designated reservations (including Venetie's 1943 Reservation) to protect tribal interests, tribal aboriginal land titles remained largely unaddressed through statehood. Alaska Statehood Act of July 7, 1958, §4, 72 Stat. 339. *Infra.* 16a-17a.

After Statehood, Alaska Native land rights came into sharp focus. Under § 6, 72 Stat. 339, Alaska was entitled to choose some 103 million acres of federal lands for state ownership. When Alaska began selecting aboriginal lands used and occupied by Native tribes, protests swiftly followed. By 1961, tribes had filed protests covering 380 million acres–greater than the land area of the state, leading the Secretary to suspend virtually all

dispositions of federal lands pending congressional action. 1971 Senate Report at 95-98; R. Arnold, *Alaska Native Land Claims* 119 (1978).

b. In the course of ANCSA's development, the Alaska Native leadership made its objectives unmistakably clear: (1) Natives had to retain title to between 40 and 60 million acres of their aboriginal lands, anchored in lands surrounding each Native village; (2) title to the unceded retained lands had to be full fee title, not "trust" title under the control of the BIA; (3) Congress had to leave the unceded lands and settlement funds in Native hands; (4) Congress had to continue protecting Alaska Natives by exempting the undeveloped lands from state taxes; (5) tribes with pre-existing reservations had to retain the option of keeping those reservation lands; and (6) Congress had to maintain the Federal Government's trust services to the tribes and their members. Alaska Natives never expressed an intent or desire to reduce their governmental rights over the land they would retain, but only to increase their control by avoiding BIA oversight. *See generally* Arnold 120-136.

ANCSA met all these requirements. ANCSA reserved to Alaska Natives full title to over 44 million acres (including former reservations), it extinguished aboriginal title to all other ceded lands, it placed those lands in the public domain, and it paid the Natives $962.5 million. 43 U.S.C. §§ 1603(b), 1605(a), 1611, 1613(h), 1615(b), (d), 1618(b).

With respect to the acreage, the surface estate in 22 million acres was reserved and distributed to all but the southeast Native villages using a population formula; another 16 million acres were reserved (along with the subsurface to the first 22 million) for the twelve regional Native investment entities established for the major ethnic tribal groupings; 2 million acres were reserved for various special purposes; and limited additional lands were reserved for the southeast villages. *Id.* §§ 1611(a), (b), (c), 1613(h), 1615(b).

All available lands in the "core" townships were automatically secured to the villages, and additional lands in the surrounding 24 townships were available to make their full entitlement, so that today most lands in and surrounding Native villages remain

in Native ownership. *Id.* §§ 1610(a), 1611(a)(1), 1611(c)(1), 1641(b). (ANCSA anchored the land in the villages, the very opposite of a "haphazard" or "buckshot" approach, Pet. Br. 45, 48.) Although all lands were patented in full fee title, all undeveloped lands were protected by federal law from "state and local real property taxes," "local assessments," and "municipal taxes." 43 U.S.C. §§ 1613(a), 1620(d).

ANCSA placed all settlement assets under the exclusive control of unique Native corporations. Each village, itself a tribe, also established a corporation under state law to "hold" the land and act "for and on behalf of" the village, though Congress also protected Alaska Native interests from various aspects of State corporate law. *Id.* §§1602(j), 1607(a). Only Natives from a village received stock in the corporation, stock was made inalienable, and only Natives retained shareholder voting rights in the event of stock transfers due to inheritance or divorce. Pub. L. 92-203, §§ 7(h), 8(c) (1971).[12] Under the original enactment, Native control of the village and regional corporations was guaranteed for at least 20 years. *Id.* Contrary to petitioner's suggestion, Pet. Br. 31, 34, Congress hardly conceived of these *sui generis* Native corporate entities as ordinary "private business corporations."

c. ANCSA preserved for reservation tribes such as respondent the option to receive either (1) full title to their reservation lands but no settlement benefits–no funds, land selection rights or regional shareholder rights, and no settlement obligations (such as re-conveyances to municipalities and others)–or (2) surface title to ANCSA formula lands plus settlement funds, regional shareholder benefits, and reconveyance obligations. 43 U.S.C. § 1618(b).

Finally, ANCSA left in place the Federal Government's trust responsibility by preserving Alaska Natives' eligibility to receive all the Federal Government's Indian trust services, *id.* § 1601(c), a provision which, as amplified by § 1626, guarantees for Alaska

[12] The twelve regional Native corporations were similarly established as Native-only institutions, but with their shareholders comprised of all the village shareholders plus all "at-large" Native people of a region not enrolled with any particular village. *Id.* § 7.

tribes precisely the same trust services that the BIA, IHS and other federal agencies provide to "Lower 48" tribes in Indian country. These services include tribal government assistance, financial and employment assistance, educational support, family support, housing assistance, road maintenance and construction, and comprehensive health care. Tribal trust services in Alaska today total just under $500 million annually, and they are primarily administered by the tribes themselves under Titles I, III and IV of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450hh. *See* Br. for *Amici* Tanana at 10-14.[13]

d. ANCSA indeed marked a "dramatic break with prior federal Indian legislation," Pet. Br. 9, not in its extinguishment, compensation and reservation of lands for tribes, but in its rejection of the anti-Indian terminationist legislation of the 1950s. *Compare e.g., Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968). Beginning in the 1960s, both Congress and successive Presidents moved Native American policy into the "Self-Determination" era, a policy most clearly articulated by President Nixon's 1970 Special Message to Congress on Indian Affairs, Pub. Papers 564-76 ("Nixon Policy"). Cohen 180-205. The President's policy, issued in the midst of ANCSA's development and embraced by the same committees of Congress considering

[13] The State strains to characterize Alaska Native communities essentially as well-off, "not dependent on the federal or territorial government for their existence" (unlike, it is implied, other Native American communities). Pet. Br. 5. Though legally irrelevant, this all too sadly is not true. When ANCSA was considered Alaska Natives lived in "dire poverty." 1971 Senate Report at 99. The median age of death was 34.5, and Native infant mortality for some age classifications was *12 times* the rate for the general population. *Id.* at 103. The median village cash income for working Natives was $1,204 (a quarter of the white rate), Native unemployment stood at 60 percent, and only 8 percent of Natives completed high school. *Id.* at 72, 101-02; *see also id.* at 71-72 (summarizing the "appalling" conditions in the villages). Unfortunately, today Native villages remain plagued by poor health, unemployment, welfare dependence, suicide, poor education, disproportionate incarceration, and substandard or nonexistent housing and basic water and sewer service. Alaska Natives Commission *Final Report* (1994) (a congressional study authorized by Pub. L. No. 101-379, § 12, 104 Stat. 478 (1990), 25 U.S.C. § 2991a note). Estimated 1968 federal "Indian program" expenditures "chiefly" for Alaska Native villages were $43 million, *Alaska Natives and the Land* 31-33, and today exceed 10 times that sum.

ANCSA,[14] called upon the Federal Government "to explicitly affirm the integrity and right to continued existence of all Indian tribes and Alaska Native governments." Nixon Policy 567. It denounced the BIA's oppressive controls over tribal life, while also discrediting the policy of terminating the federal-tribal relationship–which was to eliminate special federal "Indian" services, abolish group tribal land holdings, eliminate all state and federal tax exemptions, dismantle the tribes, and completely assimilate Native Americans into their surrounding states. *Id.* at 565-67. The new congressional Self-Determination policy has consistently been to renounce federal paternalism, protect Native control over Native resources, promote Native economic development, strengthen tribal institutions, and expand federal Indian programs and the opportunity for tribes to operate and redesign those programs, all while preserving the federal-tribal trust relationship.[15]

ANCSA is firmly rooted in this tradition. In condemning the BIA's excessive paternalism, Congress rejected Interior Department proposals to place all settlement lands in trust. *Infra* at 43, n.42. Instead, ANCSA lands enjoy various federal protections but are also free of daily BIA control. Congress also renounced termination. It rejected proposals to abolish all Native rights and interests, and to place all tribal lands in the hands of state-chartered non-Native local municipal governments, instead establishing exclusively Native village corporations. *Infra* at 48, n.49. Likewise, Congress rejected proposals to abolish most

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[14] *See, e.g.*, S. Con. Res. 26, 92nd Cong. (1971) as favorably reported by the Interior Committee as it considered ANCSA, *see* S. Rep. No. 92-561 (1971) (disavowing the termination policy and declaring "our national Indian policy" to be, *inter alia*, maximizing opportunities for Indian and Alaska Native control and self-determination); *see also* S. Con. Res. 34, 91st Cong. (1969) (supporting continued "self-determination" of "Alaska Native governing bodies").

[15] Cohen 188-204 (discussing various Self-Determination Era statutes such as the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-1341; the Indian Financing Act of 1974, 25 U.S.C. § 1451; the Indian Self-Determination Act of 1975, *supra*; and the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-1963).

federal Indian trust programs,[16] and it insisted on special measures protecting Native lands from state taxation and assuring Native control through Native-only voting rights and stock inalienability measures. As Senator Stevens aptly noted, "[W]e have basic agreement on the fact that the Alaskan Native people themselves should have the right to self-determination. This is consistent with the President's policy of self-determination without termination." 117 Cong. Rec. 38,440 (1971).[17]

Amendments to Alaska Native Claims Settlement Act

4. Since 1971 Congress has maintained an extraordinarily active role in protecting the interests of Alaska Natives under ANCSA. *Infra* 109a-110a. Through 29 amendments Congress effectively extended in perpetuity the inalienability of Native corporate stock and the restriction against non-Natives holding corporate voting rights, largely doing so by pre-empting state law and prescribing detailed and difficult supermajority voting procedures before stock inalienability restrictions can ever be lifted. 43 U.S.C. §§ 1606(h)(1), (h)(2), 1629(b), 1629(c). It created, then later enlarged

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[16] *Compare* S. 1830, §4(b), as reported, S. Rep. No. 91-925 (1970)("1970 Senate Report"), *with* 43 U.S.C. § 1601(c). The principal Senate bill in the 91st Congress proposed terminating the federal-tribal trust relationship within five years, transferring full responsibility for Alaska Natives to the State. 1970 Senate Report at 112, 114-15 (discussing §§ 2(d) and 4(b), S. 1830). After sharp debate in the Senate, in the next Congress the identical bill (S. 35) was amended to delete § 4(b)'s termination language, leaving in place § 1601(c)'s provision for a study of federal Indian programs. 1971 Senate Report at 2, 109; *see also* 117 Cong. Rec. 38,445 (1971) (comments of Senator Harris) (explaining agreement in final measure to continue all trust services).

[17] *See also* 117 Cong. Rec. 46,789 (1971) (Alaska Rep. Begich) ("The distribution of money and the system of administration established by the legislation focuses on self-determination, *village autonomy*, and an orderly flow of revenues over a period of years which will permit the social, economic and cultural choices of Alaska's Natives to be made as independently, as deliberately, and as responsibly as possible.") (emphasis added); 117 Cong. Rec. 38,446 (1971) (Sen. Metcalf) ("[T]here is a special affinity, a spiritual affinity, of Alaska and other Indian Natives, to the land on which they were born and on which their tribal organizations exist. We have recognized that spiritual affinity by giving them an opportunity to accept this land in and around their tribal communities.")

and extended forever, detailed automatic protections for undeveloped lands from both taxation and virtually any involuntary loss. *Id.* § 1636(d). It exempted Native corporations from federal securities and investment laws, while also preempting state corporate law in a wide range of other matters including internal corporate affairs, corporate mergers, dissenters' rights, amendments to articles of incorporation, shareholder petitions, valuation of corporate assets, voting requirements, and formation of trusts.[18] *Id.* §§ 1625, 1627, 1629b, 1629c, 1629d, 1629e.

The foregoing historic and statutory review reflects the Federal Government's ongoing protection of Alaska Native villages and their lands, extending from the Alaska Purchase to the present. Today the Federal Government exercises a pervasive superintendence over the affairs of Alaska Native tribes, a course of treatment that has been deliberately honed both to maximize village autonomy and self-determination, and to renounce Federal paternalism–while actively preserving the Government's role

[18] Congress also dealt with the Alaska Native Fund in the same way as tribal trust funds. 43 U.S.C. § 1605 note. It escrowed land revenues at interest pending conveyance of the lands. *Id.* § 1613 note . It extended to Native corporations the "Indian tribe" exemption from the 1964 Civil Rights Act (42 U.S.C. § 2000e), and it exempted ANCSA benefits (just like tribal judgment funds, 25 U.S.C. § 1407) from being considered in the computation of federal or federally-assisted poverty programs. 43 U.S.C. § 1626. It also added preferential tax treatment for Native corporation land by increasing its tax basis, it treated inalienable ANCSA stock identically to individual trust allotments for purposes of estate taxation, and it authorized village corporations to institute shareholder homesite programs under the protection of special tax exemptions. *Id.* § 1620(c), (f), (j).

Through many of these measures, Congress has continually provided Alaska Native villages with the tools to mold their corporations into culturally appropriate institutions far removed from ordinary business corporations. In so doing, Congress has also sought to remedy the difficulties created by the artificial 1971 cut-off in the original shareholder enrollment and the general corporate rule requiring equal benefits per share. Today, shareholders can donate their stock to relatives who own none, corporations can issue extra stock to elders to enhance their benefits consistent with tribal traditions, and corporations can issue new stock to Natives born after the 1971 cutoff without waiting to inherit corporate stock–all while immunizing the Native corporations from ordinary state laws regarding stock dilution and dissenters' rights. *Id.* § 1606(h)(1)(C)(iii), (g)(1)(B).

as trustee. At the same time, the Venetie Tribe has continuously governed the affairs of all people and lands within its former Reservation. These facts set the framework for the issues on appeal.

SUMMARY OF ARGUMENT

"The three branches of government, as well as general principles of taxation, confirm that Indian tribes enjoy authority to finance their governmental services through taxation of non-Indians who benefit from those services. Indeed, the conception of Indian sovereignty that this Court has consistently reaffirmed permits of no other conclusion." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1982). Particularly where a tax is assessed on activities occurring on tribally-owned lands, and is in place before entry is permitted on those lands, a tribe's tax can be sustained based solely on its power to exclude. *Merrion*, 455 U.S. at 144. On this basis alone, the judgment below can be affirmed.

The facts as found by both courts below also confirm Venetie's territorial authority over its lands as a "dependent Indian communit[y]" under 18 U.S.C. § 1151(b). Consistent with *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991); *United States v. Sandoval*, 231 U.S. 28, 46 (1913); *United States v. McGowan*, 302 U.S. 535, 538 (1938), the discrete area occupied by the Venetie Tribe is of a unique Indian character, and the Federal Government has continuously protected and set apart these lands for the Venetie Tribe. Further, as a federally recognized Tribe, the Tribe enjoys the Federal Government's superintendence and protection. That Venetie's homelands now are owned in fee common by the Tribe, rather than by the Federal Government in trust, has no bearing on the land's "Indian country" status, which turns primarily on the Federal Government's unique treatment of the Tribe and the area.

Before any statute is construed to reduce or eliminate the territorial jurisdiction of a tribe, "Congress [must] clearly evince [such an] intent." *Solem v. Bartlett*, 465 U.S. 463, 470 (1984)(quotations omitted). ANCSA does not meet this rigorous

standard, and thus cannot terminate what both courts below found to be Venetie's dependent Indian community status. Not only are the Act and its legislative history conclusively silent on this issue, but Venetie's continued territorial jurisdiction is readily harmonized with ANCSA's key provisions. ANCSA plainly directed that the former reservation lands be set apart for Venetie. 43 U.S.C. § 1618(b). The technical revocation of the Tribe's reservation under § 1618(a) was accomplished strictly to renounce BIA control over the land, increase the tribe's control over the land, and secure to the Tribe full fee title–a perfect expression of maximizing tribal self-determination by "maximi[zing] participation by Natives in decisions affecting their rights in property." *Id.* § 1601(b). The establishment of unique corporations to hold the land strictly "for and on behalf of" the Tribe, § 1602(j), reflects a calculated effort to increase tribal economic development options while permitting the fruits of any success–shareholder dividends–to be enjoyed by the tribal member-shareholders wherever they might reside. Both measures reflect an express intent to achieve "self-determination without termination."

For these reasons, the judgment below should be affirmed. As for the implications for the State, Indian country is not the impenetrable shield to state jurisdiction petitioner suggests. The Federal Government has complete authority to subject Indians in Indian country to state jurisdiction–and it has done so in Alaska in the areas of criminal and civil adjudicatory jurisdiction, *see* Public Law 280; taxation of ANCSA lands, 43 U.S.C. § 1620(d); application of corporate law, *id.* § 1602(j); and regulation of fish and game on ANCSA lands, 16 U.S.C. §§ 3111-126. Further, a state can generally regulate the affairs of non-Indians in Indian country, *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134 (1980), and under certain circumstances may tax Indians too. *Colville*, 447 U.S. at 164. The Indian country status of Venetie's lands is hardly the absolute barrier espoused by petitioner as a reason to depart from this Court's strict rules controlling the disestablishment of a tribe's territorial integrity.

ARGUMENT

I. THE TRIBE'S POWER TO EXCLUDE OTHERS FROM TRIBALLY OWNED LANDS IS SUFFICIENT TO SUSTAIN ITS AUTHORITY TO TAX.

In *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982), this Court acknowledged two sources of a tribe's sovereign authority to tax: the power is both "a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law," *Merrion*, 455 U.S. 137, and is part of "the Indian tribe's power to exclude non-Indians from tribal lands." *Id.* On the latter point the Court noted "that a hallmark of Indian sovereignty is the power to exclude non-Indians from Indian lands, and that this power provides a basis for tribal authority to tax." *Id.* at 141. The dissent agreed. *Id.* at 173.

The tribal tax at issue here was assessed against a private contractor engaged in a school construction project on tribal lands which had been licensed and leased to the local school district and the State. *See supra* at 5-6. Just as surely as the construction project benefitted the Tribe by improving the quality of education facilities, it also burdened the Tribe with the obligation to provide necessary governmental services, including maintenance and operation of the tribal airport and local roads, law enforcement, the health clinic, and garbage and utility services. The tribal tax imposed here was designed "to raise revenues for [the Tribe's] essential services," *Merrion*, 455 U.S. at 137, and otherwise "pay for the costs of self-government." *Id.* at 144. Unlike the circumstances in *Merrion*, here the school district, the State and the private contractor all were well aware of the Tribe's assertion of taxing authority prior to the time the school-land leases and the school-construction contract were consummated. *E.g.*, Ex. 124, 132, 134, and 136, Dkt.Nr. 109.

The facts here are not in any other respect materially distinguishable from those considered in *Merrion* and *Kerr-McGee Corp. v. Navajo Tribe*, 471 U.S. 195 (1985), with the single exception that here the tribal lands are held by the Tribe in

communal fee, while there the lands were held in trust by the Government for the benefit of the tribes. Insofar as the sovereign power to tax on sovereign owned land is concerned, it is impossible to discern any legal significance in that difference. The cases hold that a tribe may tax business activities which it permits to take place on tribal lands, particularly where the tax is in place prior to entry on the land. On this basis alone (and under the *Merrion* dissenters' view as well, 455 U.S. at 185-86 (Stevens, J., dissenting)), the judgment below can and should be affirmed.

While it is thus unnecessary to review what petitioner perceives to be the broader ramifications of the court of appeals' opinion as it pertains to other Alaska tribes not before the Court, we show that affirmance also results from a review of those issues.

II. THE FORMER VENETIE RESERVATION IS A DISCRETE AREA INHABITED BY A DISTINCTLY INDIAN COMMUNITY UNDER THE FEDERAL GOVERNMENT'S SUPERINTENDENCE AND PROTECTION, AND THEREFORE IS A "DEPENDENT INDIAN COMMUNITY" UNDER 18 U.S.C. § 1151(b).

Congress has defined three separate categories of Indian country: reservations, allotments and "dependent Indian communities." 18 U.S.C. § 1151. At issue here is the final category, encompassing "all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state." § 1151(b). Alaska is within the "subsequently acquired territory" of the United States, and the tribal lands at issue here fall comfortably within the plain meaning of this provision.

As found by the district court, confirmed by the court of appeals, and unchallenged by petitioner, Venetie is a "distinctly Indian community." Pet. App. 121a. Virtually all of the permanent residents are Indian, and all are members of the Venetie Tribe. As found below Venetie's lands, too, are of a uniquely Indian character. Not only are the lands uniquely suited to supporting

the Tribe's subsistence way of life since time immemorial, *id.* at 62a, but Congress in ANCSA confirmed the set aside of Venetie's lands for that very reason.

As a federally recognized tribe, Venetie is entitled to and in fact enjoys the Federal Government's "protection, services and benefits," and possesses "the immunities and privileges available to other federally recognized Indian tribes." 58 Fed. Reg. 54,364. Due to this political status, the Tribe is the beneficiary of the Federal Government's trust responsibility. Since the Tribe is under the "superintendence" of the Federal Government, which clearly and purposefully "set aside" its lands for the exclusive benefit of the Tribe, *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991), its lands qualify as a "dependent Indian community."

A. Venetie is a Federally Recognized Tribe and Therefore is Under the Active Political Superintendence of the Federal Government.

1. 18 U.S.C. § 1151(b) requires the presence of a "distinctly Indian community" under the federal government's political "superintendence."

a. In codifying the "dependent Indian communities" provision of § 1151(b), Congress restated almost verbatim the holding of *United States v. Sandoval*, 231 U.S. 28, 46 (1913), as repeated in *United States v. McGowan*, 302 U.S. 535, 538 (1938) . *See* 18 U.S.C. § 1151 note (Reviser's Note, 1948 Act). *Sandoval* and *McGowan* "held that Indian country includes those tribal Indian communities under federal protection that did not *originate* in either a federal or tribal act of 'reserving,' or were not specifically designated as a reservation." Cohen at 38 (emphasis added).

As its roots reflect, the key to § 1151(b) Indian country is political dependency, not federal land title. The phrase "dependent Indian communities"dates from Chief Justice Marshall's seminal observations of "Indian nations as distinct political communities" in a "dependent" relationship with the Federal Government by

virtue of their "subordination" to the superior power of the United States, akin to a guardian-ward relationship. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16-20 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832).[19] *Sandoval* continued that understanding–that congressional power in Indian affairs is rooted in the *political* dependency of tribal Indians on the United States. New Mexico argued that since Pueblo lands were not held in trust by the Federal Government they were not subject to federal guardianship. 231 U.S. at 48. Rejecting this argument, Justice Van Devanter applied the "dependent Indian community" term to the Santa Clara Pueblo, and sustained the constitutionality of a statute which (like the 1873 Act for Alaska, *supra* at 9) designated Pueblo tribal fee lands as "Indian country" for purposes of prohibiting alcohol.

b. Like New Mexico in *Sandoval* and Oklahoma in later cases, Alaska seeks to limit the scope of "dependent Indian communities" to preclude tribal lands owned in communal fee. But in *Sandoval* the Court rejected this very assertion. It looked beyond technical fee title, 231 U.S. at 48, and focused on the foundational legal principle of "dependency" to confirm congressional power over all Indian communities of a "tribal" nature:

> Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but . . . the United States as a superior and civilized nation [has] the power and the duty of exercising a fostering care and protection over all

[19]*See also United States v. Kagama*, 118 U.S. 375, 384 (1886)(employing the phrase to describe the guardian relation that is the foundation for Congress' plenary power in Indian affairs). Chief Justice Marshall equated tribal dependency not with poverty (as would Petitioner) but with the subordinated political status of Tribes: "[T]he settled doctrine of the law of nations is that a weaker power does not surrender its independence–its right to self-government–by associating with a stronger and taking its protection. A weak State, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a State." *Worcester*, 31 U.S. at 560. With political dependency the common thread in all the "Indian country" categories, the Court readily found that allotments within disestablished reservations remain Indian country so long as the Government's guardianship continues. *United States v. Pelican*, 232 U.S. 442, 447 (1914).

> dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired.

Id. at 45-46. The Court concluded that this power had been properly asserted in treating the Pueblo as a "distinctly Indian community" having a status of dependency "requiring the guardianship and protection of the United States...." *Id.* Congress's power to enact protective legislation on behalf of the Indians–a power grounded in the dependency relationship–was legally sufficient to make the nature of land tenure irrelevant.[20] *Id.* This dependency and the federal power stemming from it operate independently of the particular property rights held by the Indians or the United States, for neither the guardian-ward relationship nor that power turn on a particular form of land title in the United States either in "reversion or to the holding of a technical title in trust." *Heckman v. United States*, 224 U.S. 413, 437 (1912); *accord United States v. Rickert*, 188 U.S. 432 (1903). Consistent with *Sandoval*, § 1151(b) Indian country turns on occupancy by a "distinctly Indian communit[y]" recognized by the Federal Government as "dependent" and thus "entitled to its aid and protection,"[21] 231 U.S. at 46-47, a status consistent with tribal

[20]Justice Van Devanter added:

> In other words the lands are public lands of the pueblo, and so the situation is essentially the same as it was with the Five Civilized Tribes, whose lands, although owned in fee under patents from the United States, were adjudged subject to the legislation of Congress enacted in the exercise of the government's guardianship over those tribes and their affairs.

Id. at 48; *see also United States v. Chavez*, 290 U.S. 357, 364 (1933) (Indian country includes "any unceded lands owned or occupied by an Indian nation or tribe of Indians"). In championing *Narragansett Indian Tribe v. Narragansett Elec. Co.*, 89 F.3d. 908, 918 (1st Cir. 1996), *amici* concede that "federal title is not a prerequisite." *Amici Curiae* Br. California *et al.*, at 17.

[21]In upholding Congress' plenary power to regulate the affairs of the Pueblo Indians, the Court departed from its contrary ruling in *United States v. Joseph*, 94 U.S. 614 (1877). In so doing it confirmed that the outward manifestations of federal superintendence over the Pueblos (such as the expenditure of public monies to guard their interests, providing goods and services, prohibiting importation of alcohol into their lands and exempting their lands from state taxation), *Sandoval*, 231 U.S. at 49, were sufficient to reflect their politically dependent status irrespective of their level of citizenship, type of land tenure,

(continued...)

fee title.

c. *McGowan*, the other source of § 1151(b), articulates the same standard for Indian country. In finding the federal Indian country liquor prohibition applicable to the Reno Indian Colony, the Court relied on *Sandoval* to conclude that the prohibition was a protection extended by the United States "over all dependent Indian communities within its borders..." irrespective of land tenure. 302 U.S. at 538. The Court added: "The fundamental consideration of both Congress and the Department of the Interior in establishing this colony has been the protection of a dependent people." *Id.* The lack of any distinction between the federal treatment afforded the Reno Colony and that afforded reservation tribes, and the government's "superintendence" over the Colony, made it "immaterial whether Congress designates a settlement as a 'reservation' or 'colony.'" *Id.* at 538-39. Congress's express reliance on *Sandoval* and *McGowan* for § 1151(b), confirms that a "dependent Indian community" connotes a political relationship.[22]

(...continued)
or degree of assimilation.

[22]The Circuit Courts' dependent Indian community cases are in harmony with the principles of *Sandoval*, *McGowan* and *Potawatomi*, as reflected in § 1151(b). Within their "multi-factored inquiry" the Courts of Appeals continue to acknowledge that the "two central features of the inquiry into whether a given area constitutes Indian country" are "first, whether the territory is 'validly set apart for the use of the Indians as such,' and second, whether the Natives who inhabit it are 'under the superintendence of the [federal] government.'" Pet. App. 6a-7a (and cases cited therein); *see also* Pet. App. 11a. The multi-factored analyses employed in these cases "provide meaning to the general notions of set aside and superintendence," Pet. App. 12a, two broad concepts whose application in various settings necessarily is facilitated by the guidance these cases provide. The First, Eighth, Ninth and Tenth Circuits employ a virtually identical approach for determining the presence of a "dependent Indian community," Pet. App. 12a-13a, as reflected both in the decision below and in *Narragansett Indian Tribe v. Narragansett Elec. Co.* 89 F.3d 908, 917-22 (1st Cir. 1996);*Pittsburg & Midway Coal Mining Co. v. Watchman*, 52 F.3d 1531, 1545 (10th Cir. 1995); *United States v. South Dakota*, 665 F.2d 837, 839 (8th Cir. 1981), *cert. denied*, 459 U.S. 823 (1982), an approach that is the only practical means of maintaining flexibility in addressing the diversity of Indian communities occupying Indian country from state to state. *See also Blatchford v. Sullivan*, 904 F.2d 542, 548 (10th Cir. 1990), *cert. denied*, 498

(continued...)

2. The Venetie Tribe is under the superintendence of the Federal Government.

a. The Venetie Tribe is federally recognized and thus is plainly under the protection of the United States.[23] *United States v. John*, 437 U.S. 634, 650 (1978). The Federal Government has a long and unbroken course of dealings with the Tribe, consistently protecting Venetie's aboriginal lands beginning with the 1867 Treaty of Cession. *Supra* at 8. The Department of the Interior has continued to deal with Venetie as a tribal political body entitled to the Federal Government's guardianship and protection, as when the Department conducted a 1939 election among Venetie's members to accept the protections and benefits of the IRA. *Supra* at 3. Later in 1943, to "protect this well-established" and "self-maintaining" Tribe from the "intrusion of white trappers" and the introduction of "intoxicating liquors," a reservation was "set aside for the protection and benefit of the native Indians of Venetie." J.A. 108-109, 135. Since then, the Federal Government has continually exercised its trust responsibility over Venetie

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[22](...continued)
U.S. 1035 (1991); *South Dakota*, 665 F.2d at 839; *United States v. Cook*, 922 F.2d 1026, 1031 (2d Cir.), *cert. denied*, 500 U.S. 941 (1991); *United States v. Levesque*, 681 F.2d 75, 77 (1st Cir.), *cert. denied*, 459 U.S. 1089 (1982).

The essentially identical approaches, including the absence of any particular land tenure requirement, have been disturbed by the First Circuit's very recent shift in one respect, now requiring that federal superintendence be "dominant" vis-a-vis state involvement. *Narragansett*, 89 F.3d at 908. This change, at odds with the Court's rejection of this very argument in *Potawatomi*, was based solely on the erroneous opinion of the District Court here. It is also inconsistent with the First Circuit's earlier ruling in *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 (1st Cir.), *cert denied*, 513 U.S. 919 (1994), and effectively permits what would otherwise be a regime of concurrent state-tribal jurisdiction to trump tribal jurisdiction altogether.

[23] Petitioner incorrectly asserts that the requisite federal superintendence must be over lands. Pet. Br. 39. In *John*, 437 U.S. at 649, this Court expressly stated that it is "Indians" that must be "under federal supervision." (Nonetheless, Congress has in fact enacted substantial protective measures over ANCSA land.)

through the provision of essential governmental services and programs, J.A. 55-56; 90-92,[24] and through Venetie's inclusion with all other Native American tribes in a host of federal Indian statutes likewise designed to promote the welfare of tribal Indians. *Infra* 121a-127a. It has made abundantly clear that Venetie is "acknowledged to have 'the immunities and privileges available to other federally recognized Indian tribes,'" and that it is a "distinctly Native community[]" with "the same status as tribes in the contiguous 48 states" entitled "to the protection, services and benefits from the Federal Government available to Indian tribes." 58 Fed. Reg. 54,364.

b. ANCSA, too, preserved the Federal Government's superintendence role over Venetie. All the original protective measures concerning stock inalienability, voting rights, and land protection, along with ANCSA amendments extending to the lands the same benefits as other Indian country lands (and to Venetie the same protections and benefits as other tribes) speak powerfully to that role. So, too, do ANCSA's provisions preserving the Federal Government's trust responsibility to provide desperately needed health, social, welfare, and economic programs for the Tribes; continuing special federal grant programs; imposing extensive controls over the activities of the corporations prior to their dissolution; and extending broad tax protections for the land. 43 U.S.C. §§ 1601(c), (g), 1606, 1607, 1611(b), 1620.

[24]Venetie's allocation of federal Indian Health Service monies for the 1992 year alone totaled $445,000. J.A. 55-56. In addition to Self-Determination Act programs, the Tribal Government has administered federal grant projects for both villages including $3,000,000 for airport construction, Ex. 127, Dkt.Nr. 109; $1,740,000 to build a twenty-nine unit Indian housing project, Ex. 118, Dkt.Nr. 116, p. 133; funds to construct comprehensive water and waste disposal system, Ex. 155 & 156, Dkt.Nr. 109; $850,000 for a U.S. Housing and Urban Development Indian housing renovation project; and $158,000 from the Administration for Native Americans for a self-governance project to codify tribal law, Ex. 163 at 12, Dkt.Nr. 114, p. 102. Although Alaska implies these are merely programs for poor people "not tied to their Indian status,"(Pet. Br. 42), these tribal trust services in fact draw their constitutional authority from Congress's power under art. III, sec. 8, cl. 3 of the Constitution "to regulate Commerce . . . with the Indian Tribes," and thus to legislate with respect to such political entities and their members. *Morton v. Mancari*, 417 U.S. 535 (1974).

ANCSA and its many amendments underscore the Federal Government's continuing superintendence over Venetie. *Supra* at 17-18; *infra* at 109a-110a. Congress's behavior thus reflects a continuing course of conduct that has furthered its objective of protecting Venetie and its ANCSA lands for maximum Native benefit.[25]

[25]No deference should be accorded the contrary general conclusions of law set forth in Interior Solicitor Sansonetti's unpublished opinion, *Legal Status of Alaska Natives*, M-36975 (Dep't. of Interior, Jan. 11, 1993). First, since it has never been published the opinion is not even binding on the Department. *See Southern Ute v. Amoco Prod. Co.*, 119 F.3d 816, 831-33 (10th Cir. 1997)(quoting internal DOI regulation). Second, the opinion enjoyed but a one week life under the outgoing Administration before being placed under "review" by the new Administration, 58 Fed. Reg. 54,366 n.1, where it has remained ever since. 60 Fed. Reg. 9,250, 9,251 n.1 (Feb. 16, 1995). Third, as with any such opinion, it is not entitled to deference under *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), since it was not the product of either legislative rulemaking or administrative adjudication. *Southern Ute*, 119 F.3d at 832-33 (denying deference to a published Solicitor's opinion). Such "opinions" simply are not the kind of "binding policy pronouncement[s]" to which deference is owed. *Metropolitan Stevedore Co. v. Rambo*, 117 S. Ct. 1953, 1963 n.9 (1997); *see also, e.g., Smiley v.* Citibank, 116 S. Ct. 1730, 1733 (1996); *Martin v. OSHRC*, 499 U.S. 144, 156-57 (1991).

Further, Congress has not delegated any authority to the Department to determine the continued existence of Indian country in Alaska. Indeed (and as the opinion notes, pp. 4-5), Congress has expressly determined that this issue is to be left to the judiciary. The opinion thus does not even satisfy the threshold "precondition to deference under *Chevron*." *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649 (1990). Certainly no such delegation can be found in 43 U.S.C. § 1624, which only authorizes "regulations" to "carry out the purposes of" ANCSA, and the opinion expressly notes (pp. 1-2) it has nothing to do with "implementing ANCSA," Pet. Br. 10. Nor is there a delegation in 25 U.S.C. § 2, Pet. Br. 10, which plainly is "not a general power to make rules governing Indian conduct." *Organized Village of Kake v. Egan*, 369 U.S. 60, 63 (1962). In short, "lacking power to control," both the opinion's general conclusion about Indian country in Alaska and its cursory analysis of Venetie's status (pp. 122-23), bear only the weight supported by "all those factors which give it power to persuade." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *see, e.g., Metropolitan*, 117 S. Ct. at 1962.

c. There is no basis for limiting "dependent" Indian communities to groups that are in fact "simple, uninformed and inferior," Pet. Br. 23, n.14. Such standards have never been the test for "dependency." Rather, the courts have uniformly relied on the determinations of the political branches to treat a particular Indian group as subject to federal authority because of its tribal status, *e.g., United States v. John*, 437 U.S. at 652-53, as in fact the Court did in *Sandoval*, 231 U.S. at 40, 46-47.

d. The Federal Government has never abandoned its trust responsibilities to the Venetie Tribe. Alaska nonetheless seeks to minimize this omnipresent superintendence, asserting that the "extension of such benefits does not amount to federal superintendence or establish the Natives' dependency," implying something more is necessary. Pet. Br. 42. Indeed, Alaska would have this Court totally rewrite the fundamental concept of political dependency into one of welfare dependency. No case law or statute supports such a sweeping revision–one that would require Venetie and other "dependent" tribes to exist in abject poverty, utterly reliant on the BIA for their every need–and understandably this Court has never searched for such facts in considering the nature of Indian country under § 1151.[26]

Indeed, such a formulation disregards three decades of unbroken federal Indian policy expressly designed to reduce the dependence of *all* tribes–in the sense of welfare dependency–on the Federal Government and to free tribes from the yoke of oppressive BIA

[26]This Court has expressly rejected the argument that a tribe's receipt of state services diminishes its political dependency on the Federal Government. *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 476 (1976); *McClanahan v. Arizona State Tax Comm'n.*, 411 U.S. 164, 173 n.12 (1973). Similarly, this Court in *John*, *Potawatomi* and *Sac & Fox* disregarded the argument in the States' briefs, repeated here, that federal superintendence must be "pervasive" in Indian country. Pet. Br. 42. Indeed, applying such a standard would virtually annihilate Indian country in all Public Law 280 states (and other states such as Oklahoma and New York operating under similar statutory regimes) where the states exercise substantial jurisdiction in Indian country. Tribal member participation in state programs or state politics is no more a substitute for tribal sovereignty than is State representation in Congress a substitute for state sovereignty. *Garcia v. San Antonio Metro*, 469 U.S. 528, 565-65 (Powell, J., dissenting).

oversight, all while strictly maintaining the political "dependent" relationship. *Supra* at 15-16. The flagship legislation of this era, the Indian Self-Determination Act, was enacted to eliminate "Federal domination of programs for, and services to, Indians," while maintaining the "Government's unique and continuing relationship with, and responsibility to, the individual Indian tribes." 25 U.S.C. § 450a(b). Today, that Act requires the Federal Government to transfer its Indian programs to tribal administration, hardly a policy of maintaining the sort of economic dependency and paternalism Alaska advances as the necessary *sine qua non* of Indian country status. That statute and substantial portions of Title 25 (*infra* 113a-115a, 124a) enacted through this period "reflect Congress' desire to promote the 'goal of Indian self-government, including its overriding goal of encouraging tribal self-sufficiency and economic development.'" *Potawatomi*, 498 U.S. at 510 (citation omitted). Thus both modern laws and this Court's jurisprudence recognize that Indian tribes maintain their tribal political relationship with the United States regardless of economic status.

B. Venetie's Lands Have Continuously Been Set Aside For the Venetie Indians.

1. Congress has recognized the Venetie reservation area as a distinct location for the Venetie Tribe.

a. As the leading treatise concludes, since "the terms of section 1151(b) refer to residential Indian communities under federal protection, not to types of land ownership or reservation boundaries," whether a particular area fits within § 1151(b) depends on "the federal purpose in recognizing or establishing a reasonably distinct location for the residence of tribal Indians under federal protection." Cohen at 39.[27] Where a federally

[27]Alaska errs in suggesting that § 1151(b) is limited to instances where Congress has intended to "create" Indian country, by declaring an area to be a "reservation or its equivalent." Pet. Br. 20-27, 34. Neither *Sandoval* or any other case

(continued...)

recognized tribe comprises a "distinctly Indian community" occupying a discrete area, and is subject to legislation enacted in furtherance of the Government's guardianship over that community, the community land base has consistently been regarded as set apart for the use of Indians.[28] *Sandoval*, 231 U.S.

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[27](...continued)
decided either before or after the 1948 enactment supports such a construction of the term, particularly one which, as *Amici* Council of State Governments correctly note, historically "has been left by Congress largely in this Court's hands." *Amici* Br. 3. Indeed, this argument has long been rejected, even as to reservations:

> Now, in order to create a reservation it is not necessary that there should be a formal cession or a formal act setting apart a particular tract. It is enough that from what has been done there results a certain defined tract appropriated to certain purposes.

Minnesota v. Hitchcock, 185 U.S. 373, 389-90 (1902); *see also Spalding v. Chandler*, 160 U.S. 394, 403-04 (1896); *Arizona v. California*, 373 U.S. 546, 597-98 (1963); *Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 125 (1993) (Indian country consists of "lands set aide by whatever means for the residence of tribal Indians under federal protection"). Nor would Alaska's approach comport with a multitude of lower court decisions that have found Indian country in the absence of such a congressional designation. In *Youngbear v. Brewer*, 415 F. Supp. 807 (N.D. Iowa 1976), *aff'd*, 549 F.2d 74 (8th Cir. 1977) and *State v. Youngbear*, 229 N.W.2d 728 (Iowa), *cert. denied*, 423 U.S. 1018 (1975), the courts held that the Mesquakie Sac and Fox Settlement was Indian country despite the absence of any statute or order declaring the land to be a reservation. Similarly, the reservation of the Eastern Band of Cherokee has been treated as Indian country, despite the absence of a specific statute or executive order proclaiming the lands to be a reservation. *See United States v. Lossiah*, 537 F.2d 1250 (4th Cir. 1976); *United States v. Hornbuckle*, 422 F.2d 391 (4th Cir. 1970); *United States v. Parton*, 132 F.2d 886 (4th Cir. 1943); *United States v. Wright*, 53 F.2d 300 (4th Cir. 1931), *cert. denied*, 285 U.S. 539 (1932). And, in *State v. Dana*, 404 A.2d 551 (Me. 1979), *cert. denied*, 444 U.S. 1098 (1980), the court found the Peter Dana Point Indian Township was Indian country, although designated by state authorities through treaties never approved by the Federal Government. *See also United States v. Levesque*, 681 F.2d 75 (1st Cir.), *cert. denied*, 459 U.S. 1089 (1982) (same); R. Clinton et al. *American Indian Law* 117 nn.1 & 2 (3d ed.1991)(discussing cases).

[28] In short, in every case where the area in question has been the home of a federally recognized tribe, Indian country has been found, just as this Court so found in *John* and *Potawatomi*. Efforts by tribes to assert that lands (continued...)

at 46-47; *McGowan*, 302 U.S. at 539.

b. Congress has certainly "recogniz[ed] or establish[ed] a reasonably distinct location for the residence of [the Venetie] tribal Indians under federal protection." Cohen at 39. Venetie's aboriginal lands were set apart from the public domain under the rule of *Bates v. Clark*, 95 U.S. 204, 208 (1877) (holding unextinguished aboriginal title is Indian country). Later, that character was strengthened with the establishment of its Reservation. ANCSA aside, both courts below also found Venetie comprised a dependent Indian community. Pet. App. 31a, 67a. As discussed fully *infra* at 40-45, more recently Congress in ANCSA continued "recognizing or establishing a reasonably distinct location" for Venetie by ripening its title into full fee. Indeed, in directing that the reservation lands be conveyed to the Venetie corporations, the Secretary emphasized that the lands had already been "set aside for the use or benefit of their stockholders *prior to* the enactment of [ANCSA]." Ex. 78, Dkt. Nr. 109 (emphasis added). The lands remained with Venetie, the Native stockholders on whose behalf the lands had been previously set aside retained control over the lands, and the lands were given full protection from involuntary loss or taxation. Plainly, Congress has seen to it that Venetie's unceded lands remain reserved and set apart for its exclusive use and occupation. Today these tribal homelands remain in tribal ownership and under the uninterrupted governance of the Venetie Tribe.

Setting aside Venetie's unceded lands for the Tribe is precisely what Congress had in mind, for it conceived of the settlement within the very same framework as all other Indian land settlements:

> It has been the consistent policy of the United States Government in its dealings with Indian Tribes to grant to them

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(...continued)
unilaterally acquired by tribes and situated outside a tribe's homeland qualify as Indian country have failed, *Buzzard v. Oklahoma Tax Comm'n.* 992 F.2d 1073 (10th Cir. 1993); *United States v. Adair*, 111 F.3d 770 (10th Cir. 1997), answering the suggestion of petitioner and its *amici* that the Circuit cases sanction uncontrolled and unilateral creation of dependent Indian communities anywhere in the country.

title to a portion of the lands they occupied, to extinguish the aboriginal title to the remainder of the lands by placing such lands in the public domain, and to pay the fair value of the titles extinguished.

H.R. Rep. No. 92-523 at 5-6 (1971)("1971 House Report"). There can be no doubt but that Congress "granted to [Venetie] title to a portion of the lands [it] occupied."[29]

c. That Congress continued to "set aside" Venetie's lands for the Venetie Tribe is consistent with the diverse array of post-1971 congressional enactments generally referring to ANCSA corporate lands as lands under the territorial jurisdiction of the local tribe. Because these enactments and ANCSA deal with the same subject–ANCSA lands–they must be read *in pari materia*. *Haig v. Agee*, 453 U.S. 280, 300-01 (1981).

For instance, in the Native American Programs Act of 1974, as amended, 42 U.S.C. § 2991-2992d., Congress addressed Alaska Native village lands as subject to village tribal jurisdiction.[30] The

[29] The same cannot be said of the millions of acres of regional corporation investment lands that were not set aside under ANCSA for particular villages, but instead are managed for the benefit of an entire region's Native population. *Supra* at 14, n.12. For this reason alone (among many others), the issue *amicus* Koniag would now inject into the case is simply not present. And as for village corporation lands of other villages, such lands would have to meet the strict standards articulated here, including being a part of a "distinctly Indian community." Lands in abandoned villages and lands situated miles away due to ANCSA's "deficiency" withdrawals, 43 U.S.C. § 1610(a)(3), would likely never meet this test.

[30] Under 1990 amendments to that Act, the ANA provides financial assistance to Alaska Native villages to "improv[e] the capability of the governing body of the Indian tribe to regulate environmental quality pursuant to Federal and tribal environmental laws," 42 U.S.C. § 2991b(d)(1), including "development of tribal laws on environmental quality," "enforcement and monitoring of environmental quality laws," and "training and education of [tribal] employees responsible for enforcing or monitoring compliance with environmental quality laws." *Id.* § 2991b(d)(2)(A) – (C). For other programs authorized by the Act, no ANA grant may be awarded to any grantee for a "project . . . which is to be carried out on or in an Indian reservation or *Alaska Native village*, unless a plan setting forth the project has been submitted to the governing body of that reservation or village and the plan has not been disapproved by the governing body within thirty days of its submission." *Id.* § 2991f(a) (italics

(continued...)

Administration for Native Americans (ANA) annually funds Alaska tribal environmental regulation initiatives, as well as environmental cleanup initiatives on former Defense Department lands. ANA also supports a wide range of other Alaska tribal territorial governance activities, including the development of tribal civil and criminal "codes and tribal court systems" and the strengthening of "village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate."[31] In the environmental arena, the Oil Pollution Act of 1990 acknowledges the role Alaska Native villages play as natural resource trustees in the event oil spills affect lands "belonging to, managed by, controlled by, or appertaining to such Indian tribe." 33 U.S.C. §§ 2701(15), 2706(b)(4). The Comprehensive Environmental Response, Compensation and Liability Act similarly includes Alaska Native villages as tribes that must be treated as states in connection with various environmental regulation activities in Indian country (such as the clean-up of hazardous waste sites and responding to hazardous spills). 42 U.S.C. §§ 9601(36), 9626. And the Clean Air Act puts all tribes exercising "substantial governmental duties and powers" over any "areas within the tribe's jurisdiction," including Alaska Native villages, on an equal footing with states in connection with various initiatives. 42 U.S.C. §§ 7601(d), 7602(r). Congress has also provided special federal mortgage insurance if the mortgage is executed by an "Alaska Native tribe" and the property is located on "land acquired by Alaska Natives under [ANCSA] or any other land acquired by Alaska Natives pursuant to statute by virtue of their unique status

(...continued)

added). The italicized language delineating the territory of a Native village includes Settlement Act lands "under the jurisdiction" of the village. *Id.* § 2992c(2).

[31] *See, e.g.*, Administration for Native Americans; Availability of Financial Assistance, 60 Fed. Reg. 46,598, 46,603 (1995) (a special ANA "Alaska Native Initiative" begun in the early 1980s).

as Alaska Natives." *See* 12 U.S.C. § 1715z-13(a)(1), (i).[32] As reflected *infra* 110a-120a, some 50 discrete federal enactments address Alaska Native villages as possessed of territorial jurisdiction in their communities.

d. Finally, the continuation of Venetie's Indian country status after the conveyance of its lands to the local Native village corporations is consistent with Congress's treatment of tribes and village corporations. Congress frequently refers to the ANCSA corporations and the recognized village tribes interchangeably, furthering the original goal of establishing each village corporation to engage in pursuits "for and on behalf of" the local tribe, 43 U.S.C. § 1602(j).[33]

2. Venetie's "dependent Indian community" status is consistent with the ownership of its lands in fee status.

In codifying *Sandoval*, Congress expressed its intent that the "the simple ownership of lands by a federally-recognized, dependent Indian tribe is sufficient to bring the lands so held within

[32] *See also* Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 *et seq.*, recognizing the jurisdiction of "any Alaska Native village" over child custody matters arising both within and outside the "Indian country" occupied by their villages. 25 U.S.C. § 1903(8). Under § 1918(b)(2), the Act also recognizes the tribal option to reassume the "exclusive" civil adjudicatory jurisdiction over domestic relations matters that is enjoyed by tribes in states not covered by Public Law 280, *Native Village of Venetie v. State of Alaska*, 944 F.2d 548, 555-56 (9th Cir. 1991). Exclusive tribal jurisdiction over domestic matters under the Act of course only exists in Indian country. *Id.*

[33] *See, e.g.*, 15 U.S.C. § 637(a)(13); 25 U.S.C. §§ 450b(b), 1603(d), 3501(2); 42 U.S.C. §§ 8802(12), 11472. Congress understood well this close relationship:

> Section 11 [later 43 U.S.C. § 1607] deals with the traditional organizational unit in Native society, the village. Over 70 percent of all Natives in Alaska live in these villages, and they provide one of the strongest loyalties felt by the Native people. Because the Committee felt that it was on this level that Native self-determination could best be maximized, this section provides the procedures for the organization of villages into corporations able to democratically decide among the various options open to Native people under the Act.

1971 Senate Report 132.

the ambit of the phrase 'Indian country.'" R. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 Ariz. L. Rev. 503, 507 (1976). "As long as the indicia of dependence exist and the Native people continue to reside together in a reasonably distinct location recognized as their residence by the federal government, they should be considered 'dependent Indian communities.'" Cohen at 766. Tribal ownership of fee land is fully consistent with this status.

Alaska's insistence that a dependent Indian community must be a reservation or owned in trust by the United States severs § 1151 from its historic roots. Further, it would nullify the term and collapse subsection (b) into subsection (a), which already provides that trust and reservation lands qualify under subsection (a). *John*, 437 U.S. at 647-53; *Potawatomi,* 498 U.S. at 509-11. This interpretation is at odds with the time-worn rule that a statute must not be construed so as to render any one part redundant or superfluous. *United States v. Alaska*, 117 S.Ct. 1888, 1918 (1997); *Walters v. Metro. Educ. Ent. Inc* , 117 S.Ct. 660, 664 (1997). Moreover, Alaska's standard would call into question the continued Indian country status of other tribes across the country who likewise own their homelands in fee. *See, e.g., Sandoval* (New Mexico Pueblos); *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832 (1982); *United States v. Martine*, 442 F.2d 1022 (10th Cir. 1971) (Navajo bands); *Indian Country, U.S.A., Inc. v. Oklahoma Tax Comm'n*, 829 F.2d 967 (10th Cir. 1987) (Oklahoma Tribes); *New York Indians v. United States*, 170 U.S. 1 (1898)(New York Tribes).[34]

Petitioner is wrong that § 1151 is some "narrow" category with "limited scope," affecting "only a tiny portion of Indian country nationwide." Pet. Br. 19-20. *Sandoval* alone established that twenty Pueblos with 8,000 Indians living on some 17,000 acres

[34] Not only has no rule of law ever required that tribal governmental jurisdiction over Indian land is limited to instances where the land is owned by the United States in trust for the Tribe, *Merrion*, 455 U.S. at 143, but the very suggestion conflicts with the doctrine of inherent tribal sovereignty. Indeed, it would put a tribe with relatively greater ownership rights in a weaker governmental position than one whose land is owned by and under the control of the Federal Government.

each, or roughly 340,000 acres total, were dependent Indian communities. 231 U.S. at 38-39; *see also* Clinton, 18 Ariz. L. Rev. at 507 n.27.

In the leading tribal tax cases, the only difference between Venetie and the Jicarilla Apache (in *Merrion*), or the Navajo (in *Kerr-McGee*), is that Venetie's unceded reservation lands are no longer held in trust but in common by the Tribe. The distinction is immaterial. In codifying § 1151, Congress eschewed technical distinctions in land tenure and "defined Indian country broadly." *Oklahoma Tax Comm'n. v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993). "Indian country" does not turn on the label used, nor on the manner by which the lands were acquired. *McGowan*, 302 U.S. at 538-39. Indeed, "the statutory definition . . . was intended to eliminate reliance on land titles in these matters." Cohen at 766. Thus, this Court only asks whether an "area has been validly set apart for the use of the Indians as such, under the superintendence of the Government." *Potawatomi*, 498 U.S. at 511 (internal quotations omitted).

III. ANCSA DID NOT TERMINATE VENETIE'S AUTHORITY TO GOVERN ITS OWN AFFAIRS IN ITS ANCESTRAL LANDS.

Alaska insists not only that Venetie's continued Indian country status is somehow inconsistent with ANCSA, but that ANCSA actually terminated that status–although it concedes Congress never said so. It thus contends ANCSA implicitly extinguished Venetie's territorial authority in Indian country. This proposition cuts directly against ANCSA's fundamental purpose and this Court's precedents.

As the historic record shows (*supra* at 12-17), ANCSA was a land claims statute adopted as an integral part of the Self-Determination Era. Taken in that context, ANCSA's plain words cannot fairly be read as an implicit termination of the very village

tribal communities the Act was intended to benefit.[35] Indeed, this Court's precedents demand that before any statute be construed to reduce or eliminate the territorial jurisdiction of a tribe, "Congress [must] clearly evince [such an] intent." *Solem v. Bartlett*, 465 U.S. 463, 470 (1984)(quotations omitted); *see also DeCoteau v. District County Court*, 420 U.S. 425, 447 (1975); *Mattz v. Arnett*, 412 U.S. 481, 505 (1973). In reviewing the statute the Court gives "the broadest possible scope" to the canon that "legal ambiguities are resolved to the benefit of the Indians," *DeCoteau*, 420 U.S. at 447, a rule first articulated in *Worcester*, 31 U.S. at 582 (M'Lean, J., concurring); *see also South Dakota v. Bourland*, 508 U.S. 679, 687 (1993) ("'statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit'") *quoting County of Yakima v. Yakima Nation*, 502 U.S. 251, 269 (1992); *United States v. Santa Fe Pac. R. R. Co.*, 314 U.S. 339, 354 (1942); *Alaska Pac. Fisheries v. United States*, 248 U.S. 78, 89 (1918); *Choate v. Trapp*, 224 U.S. 665, 675 (1912); Cohen at 224. As Justice Scalia noted in *Yakima*, this is "a principle deeply rooted in this Court's Indian jurisprudence," 502 U.S. at 269.

Termination of a tribe's territorial integrity further requires either "plain and unambiguous" language, *Santa Fe*, 314 U.S. at 346, such as where the land is "ceded" and returned to the "public domain," *Hagen*, 510 U.S. 399 at 412-13, or "[w]hen events surrounding [the enactment] ...*unequivocally* reveal a widely held contemporaneous understanding" that the tribe's territory would be lost, *Solem*, 465 U.S. at 471 (emphasis added), reflecting the Indians' understanding too. *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631 (1970). "To a lesser extent" the Court has also looked to subsequent events and congressional treatment, and "[o]n a more pragmatic level" to who actually resides on the lands–tribal members or outsiders. *Solem*, 465 U.S. at 471; *see generally Hagen*, 510 U.S. at 410-12 (majority), 422-23

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[35] Even silence or ambiguities in termination era legislation must be resolved in favor of continued tribal authority, *Bryan v. Itasca County*, 426 U.S. 373, 388 (1976); *a fortiori* the same must hold true in the context of quintessential self-determination legislation like ANCSA.

(Blackmun, J., dissenting) (reviewing canons). Even where Congress has "anticipated the imminent demise" of a tribe and sought to "facilitate the process" the Court has cautioned against "extrapolat[ing]" a disestablishment if the statutory language is insufficient. *Solem*, 465 U.S. at 468-69.[36]

Congress is presumed to have legislated against the backdrop of these precedents, *e.g., Alaska,* 117 S.Ct. at 1907, and there is every reason to believe Congress was aware of these principles in 1971–given this Court's reaffirmation of them in *Menominee Tribe of Indians v. United States,* 391 U.S. 404, 412-413 (1968), as ANCSA was being drafted. To prevail Alaska must show Congress clearly terminated Venetie's Indian country status. Here that effort fails.[37]

A. The Technical Revocation of Venetie's Reservation and the Conversion of its Lands into Fee Title Did Not Terminate Venetie's Authority to Govern its Own Affairs in its Territory.

1a. Alaska would have this Court read 43 U.S.C. § 1618 as equivalent to a disestablishment or termination provision, since by its terms the Venetie Reservation was "revoked." But the State's argument fails to consider what Congress actually accomplished. At the same time § 1618(a) "revoked" Venetie's

[36] The panel below correctly applied these canons and disregarded the petitioner's attempt to weaken the rule in reviewing ANCSA. The canons rest not on how well or badly the Native position is represented in dealings with Congress, but on the trust relationship and the superior power of Congress in Indian affairs. *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985); *Choctaw Nation v. United States*, 119 U.S. 1, 28 (1886); *United States v. Rickert*, 188 U.S. 432, 437-38 (1903); *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565-67 (1903). This superior power is particularly compelling in ANCSA, where even petitioner must recognize Congress acted purely "as a matter of grace," *Tee-Hit-Ton,* 348 U.S. at 282, something Congress well understood. 1971 House Report 5.

[37] Although Alaska would now reframe the question as whether ANCSA "created" Indian country, Pet. Br. 38, the question presented by the State and considered below was whether ANCSA was a termination act–did it extinguish Venetie's existing Indian country.

Reservation, § 1618(b) authorized the Tribe's two villages, acting through village corporations and in lieu of all other benefits, "to acquire title to the surface and subsurface estates" in the Reservation that had been "set aside for the use or benefit of its stockholders or members." While Congress technically "revoked" the "reservation" status, the land was not thereby "allotted," "restored to the public domain," or opened to outside settlement in any way. *Compare Hagen,* 510 U.S. at 412. To the contrary, the undivided land *remained* communally owned by Venetie, and was *not* to be ceded: "the lands were withdrawn from reservation or reserve status for the purpose of selection" by the Venetie corporations in fee. *Ollestead v. Native Village of Tyonek*, 560 P.2d 31, 35 (Alaska 1977).

Moreover, unlike the completely extinguishable title Venetie held before ANCSA under a revocable Secretarial reservation, *Hynes*, 337 U.S. at 103, § 1618(b) assured Venetie it would receive full and unrestricted "title to the surface and subsurface estates" fully protected under the Fifth Amendment. To be sure, opting out of ANCSA's general scheme came at a price: Venetie would entirely bypass ANCSA's generous compensation benefits and the Act's regime for regional stockholder benefits. For all intents and purposes, Venetie would therefore not be affected by (and would hardly benefit from) the Act–save in the permanent protection of its lands.[38]

[38] Alaska alludes to the municipal reconveyance provisions of § 1613(c)(3) as indirect evidence Congress thought about municipalities and therefore implicitly intended no governmental role for the tribes. Pet. Br. 9, 31, 41. But Venetie secured its fee patent under § 1618(b), and the municipality provision of § 1613(c)(3), by its own terms applies only to villages receiving patents under § 1613(a) or (b). Section 1613(c)(3) therefore has no bearing on Venetie (whatever its silent implications may be argued to be elsewhere). Moreover, state-chartered municipalities are consistent with and common throughout Indian country. *E.g., Seymour v. Superintendent*, 368 U.s. 351, 357 (1962); *South Dakota,* 665 F.2d at 840-41; *Shakopee v. City of Prior Lake*, 771 F. 2d 1153 (8th Cir. 1985), *cert denied*, 475 U.S. 1011 (1986). *See* Br. *Amici Curiae* Alaska Federation of Natives *et al* 23.

b. These provisions stand in stark contrast to the disestablishment cases so heavily relied upon by Petitioner.[39] In no case has this Court ever found a diminishment or disestablishment in the absence of tribal lands being allotted, restored to the public domain, or otherwise disposed to non-Indians. *E.g.*, *Hagen*, 510 U.S. at 413; *Bourland*, 508 U.S. at 692; *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977). Indeed, the Court has recognized that *within* disestablished reservations, *unceded* Indian lands remain Indian country even as other lands return to the public domain. *DeCoteau*, 420 U.S. at 446; *Pelican*, 232 U.S. at 449.

c. ANCSA's legislative history echoes the congressional intent to *benefit* 'opt-out' tribes like Venetie, not terminate their tribal authority over their territory. The reservation-revocation provision first appeared in a 1967 Administration-sponsored bill transferring the "revoked" lands to the reservation tribe in trust for 25 years, and thereafter in fee. *See* 1968 Senate Hearings 18 (reproducing S. 1964, § 3). Plainly, this bill, because it would have created trust land, used the term "revoked" in a manner consistent with continued "Indian country" status, rather than with disestablishment. *See Potawatomi*, 498 U.S. at 511 (18 U.S.C. § 1151(a) includes trust lands). This use of the term "revoked" survived to final enactment. At no time did Congress indicate any intent to deprive a tribe in Venetie's situation of its inherent authority to govern its lands by "revok[ing]" its reservation. Alaska Senator Gravel explained this well:

"Under the committee bill all reservations in Alaska are

[39] The State relies on each of this Court's disestablishment cases, laying particular emphasis on *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498 (1986). But none of these cases comes even close to the factual and legal history present here, as *Catawba* illustrates. There, by a 1959 termination-era act, Congress revoked the tribe's constitution, terminated all special Indian services to the tribe, disposed of all tribal assets to the tribal membership and removed the tribe and its members from the coverage of all federal legislation benefiting Indian tribes. *See Catawba*, 476 U.S. at 504-05. A case more dissimilar from Congress's treatment of the Venetie Tribe would be difficult to imagine: Venetie's tribal structure and constitution survived ANCSA, all federal Indian services remained in place, and the Tribe (along with its members) has remained within the coverage of all special federal Indian legislation.

revoked, *unless the village corporations located within the reservation elect to take fee title to the reservation.* If Natives do elect to take title to the reservation, they will not participate in the land selection procedures of the bill, nor share in the monetary settlement."

117 Cong. Rec. 46,967 (1971)(emphasis added).

Contrary to Petitioner's misreading of the legislative history, it is plain Congress intended to foster *greater* autonomy for Venetie by placing its reservation lands in fee ownership: "[T]he revocation of these reservations is in keeping with the expressed desire of the Native people of Alaska to be free of the administrative oversight and wardship of the Bureau of Indian Affairs...." 1970 Senate Report 157. Fee title achieved that specific purpose. The problem Congress perceived with reservations was not with tribal sovereignty but with oppressive BIA paternalism.[40] As petitioner put it, "Indians did not own or control the land. Rather, the land was held in 'trust' for them by the federal government, and any action concerning the land was subject to exclusive federal control." Pet. Br. 4. So long as the Federal Government owned Venetie's reservation in trust, Venetie could not alienate or mortgage its land, or even lease or otherwise develop the land without BIA review, interference and uncertain approval. Economic self-determination was limited. Congress believed the solution was to convey full fee title, thereby eliminating what Congress viewed as the BIA's repressive paternalism, and "maxim[izing] participation by Natives in decisions affecting their rights and property," 43 U.S.C. § 1601(b). To achieve that result did not require the termination of the Tribe's authority to govern the land.[41]

[40] "[I]n determining the meaning of the statute, [the Court] must look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy." *Crandon v. United States*, 494 U.S. 152, 158 (1990).

[41] It is for this reason alone–ANCSA's command for fee title–that Interior rejected Venetie's 1978 request to immediately return its land to trust status (and thus avoid interim administration by Interior pending patent), not because of any perception that Venetie no longer governed its lands. JA 142-43.

(continued...)

The Native leadership struggled against the Interior Department to secure fee title. For a time, Interior insisted that all lands be held in trust for at least 25 years, as reflected in bills introduced at its request. *See, e.g.*, S. 1964, 90th Cong., 1st Sess. (1967) and S. 3586, 90th Cong., 2d Sess. (1968) *reproduced in* 1968 Senate Hearings 517. But as bills containing greater Native input reflected, at most Natives would agree that "trust land" status could be a tribal option.[42] By final enactment, the "fee title" provision fostering greater tribal self-determination and renouncing BIA paternalism prevailed. There is no incompatibility between this beneficent purpose–greater Native control over the land–and continued tribal jurisdiction over the land, particularly where (as in Venetie's case) the Tribe has always governed its own affairs.

The perceived problem never was the presence of sovereign tribal governments– whose only interest would obviously be to foster local control and economic development. Petitioner's every citation to hearing testimony disavows the reservation-trust regime of BIA control;[43] on an issue where silence truly counts, not one quote mentions (much less suggests terminating) continued tribal

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(...continued)
That Venetie might have preferred to return its land to trust status does not detract from Congress's decision that fee title would better maximize tribal autonomy.

[42] *See, e.g.*, S. 2906, § 211, *reproduced in* 1968 Senate Hearings 9, 105 (Task Force commentary explaining same). Contrary to Petitioner's mischaracterization of Mr. Jackson's testimony, Pet. Br. 8, Natives only opposed any absolute mandate that all village lands first go into trust. The Native proposal clearly was to "permit[] a trust to be established at the option of the native group," 1968 Senate Hearings 579 (B. Jackson).

[43] Excessive BIA control is what led to reservations being viewed "as incompatible, with maximum economic self-determination," why one attorney testified Alaska Natives were "vehemently antireservation," why one congressman in 1971 remarked that bills under consideration "eschew the reservation or trust concept," and why one committee report sought "to avoid perpetuating in Alaska the reservation and trustee system." Pet. Br. 28-29 n.17, 30 n.20, 40-41 n.30 (selecting excerpts from hearings, debates and the 1971 Senate Report).

territorial jurisdiction.[44]

B. ANCSA's Placement of Venetie's Lands in Native Corporations Established by the Tribal Villages, Rather Than Directly in the Hands of the Tribe, Did Not Terminate Venetie's Authority to Govern its Territory.

1a. There is nothing inconsistent between the formation of village corporations under §§ 1602(j) and 1607, and the continuation of tribal jurisdiction over village lands. To the contrary, § 1602(j) plainly contemplates that the local village tribe is to organize the corporation as a profit or nonprofit entity, and that the resulting corporation is "to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets *for and on behalf of a Native village*." Whether profit or non-profit, the corporation is thus an economic engine with a mission to manage village assets. Such a provision hardly bespeaks the total separation in entities, one Native and the other merely a "private business corporation"–much less a destruction of the village as a tribal government.[45]

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[44] As Alaska Congressman Nick Begich observed, "The bill is sensitive to the heritage and culture of Alaska's Natives and does not impose either conditions or structures which would require abandonment of a proud past. The family and the village, which are the cornerstones of the culture, are protected and enhanced by this bill," 117 Cong. Rec. 36,866 (1971) later adding "In my view, the final bill remains sensitive to the Native Village and its needs...." The "legislation focuses on self-determination, [and] village autonomy...." 117 Cong. Rec. 46,789 (1971). *See also supra* at 17, n.17 (remarks of Senator Metcalf). Petitioner's reliance (Pet. Br. 36, n.25) on a closed executive session exchange not known to Congress, on provisions of a bill not enacted (H.R. 10367, which at the time of exchange would have transferred all Native lands to state municipal corporations) and on the application of state, not tribal law, leads nowhere.

[45] The situation with the four "urban corporations" like *amicus* Shee Atika, Inc., formed under 43 U.S.C. § 1613(h)(3), could not be more dissimilar. These were not "distinctly Indian communities" at all, but urban non-Native communities that could not qualify under § 1610(b)(3). Native members of those corporations were considered to have no compensable aboriginal claims

(continued...)

b. By following ANCSA's regime, the Venetie Tribe kept its lands under Native ownership and control. The two village corporations were formed by the Tribe to hold the land "for and on behalf of" the villages. The tribal members were designated as the shareholders to control the land, and their stock was made inalienable. It could not be "sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated." Pub. L. 92-203, §§ 7(h)(1), (2), 8(c), 85 Stat. 688, 691-694. Only Venetie members or their descendants could exercise voting rights. *Id.* Although the land was not placed under a "trusteeship," it was given absolute federal protection from involuntary loss through taxation, or judgment execution so long as it remained undeveloped. *Id.* § 21(d), 85 Stat. 713. Even without considering later amendments, it is difficult to conceive of a more secure way for Congress to have maintained Venetie's lands in Native hands while capitalizing on the perceived advantages of the corporate form–which, of course, was Congress' intent to begin with: to accomplish a settlement "in conformity with the real economic and social needs of Natives." 43 U.S.C. § 1601(b). This is precisely the conclusion reached in the leading

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(...continued)
and therefore received no compensation at all under the Act. The corporations were not established "for and on behalf of a village" but merely to provide economic benefits to local Native residents regardless of tribal affiliation. In the case of *amicus* Shee Atika, there has never been an identity between the urban corporation's members and the local tribal membership. Their ANCSA lands are situated outside of (and often quite far from) the municipalities. Under the standard articulated by the court of appeals, Shee Atika's distant lands–not even a part of the non-Indian community, much less any "distinctly Indian community," could never be determined to be within some "dependent Indian community" set apart for the benefit of the local Sitka Tribe.

Amicus Koniag's suggestion that in 1971 no such identity ever existed between tribal memberships and village corporation memberships due to the alleged "restrict[ion] of voting membership only to [residents]," *Amicus* Br. at 5 n.18, is contrary to the very facts of this case and confuses tribal membership eligibility (for most tribes is a birthright) with voter eligibility (dependent on such factors as minimum age requirements and the like).

treatise on federal Indian law. Cohen at 766-67.[46]

c. Section 1601(b) does not alter this analysis. Congress understood well that in 1971 it was setting aside ANCSA lands for Natives as such, even as it appeared to disavow a desire to do so "permanent[l]y." 43 U.S.C. § 1601(b). While far from clear, Congress's intent in 1971 may well have been for the closed Native corporations to be opened to the public after 20 years, with all the various "special tax privileges" expiring at that time.[47] But whatever its initial intent, Congress charted a clear course when, within five years, it amended the Act in what would become a continuing process of protecting and extending the "Native" character of the ANCSA corporations and the unique rights, privileges and protections they enjoy, *supra* at 17-18. By these measures, protections that in 1971 Congress may have considered temporary ultimately became "permanent"–unless Congress should one day change course.[48]

d. So closely allied are the village tribes and the ANCSA corporations that time and again since 1971 Congress has

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[46] *See also* D. Blurton, *ANCSA Corporation Lands and the Dependent Indian Community Category of Indian Country*, 13 Alaska L. Rev. 211, 229-36 (1996); G.G. Biggs, *Is There Indian Country in Alaska? Forty-Four Million Acres in Legal Limbo*, 64 U. Colo. L. Rev. 849 (1993); P. Thompson, *Recognizing Sovereignty in Alaska Native Villages After the Passage of ANCSA*, 68 Wash. L. Rev. 373, 383-90 (1993).

[47] *See* 1971 Senate Report 109 ("Other provisions of the bill do, of necessity, make racial distinctions and do grant special tax relief for limited periods of time. These provisions are of limited duration and are necessary to effectuate a settlement which, because of its very nature, is based on ethnic consideration,") (explaining what became § 1601(b)). Section 1601(b) comes almost verbatim from S. 1830, 91st Cong., 2nd Sess. (1970), a measure which contemplated no Native institutions or tax privileges at all, since all lands were to be conveyed to state municipal governments. Although Congress rejected this approach, § 1601(b) survived. This history clouds Congress's intent. J. Walsh, *Settling the Alaska Native Claims Settlement Act*, 38 Stan. L. Rev. 227, 244-46 (1985).

[48] Alaska Senator Murkowski put the issue well: "ANCSA is a 'living' settlement. It is not a fixed formula which is cast in stone and incapable of adopting to changing reality. Rather, it is a flexible framework designed to provide Alaska Natives with a maximum amount of self-determination as they strive to balance the needs of their present and future generations." 133 Cong. Rec. 37,722 (1987).

authorized either or both entities to carry out various federal initiatives without distinction. *Supra* at 36. It has spoken of tribal regulation of the corporation land. *Supra* at 34-36. And it has increasingly retooled the law governing village corporations to the point that in effect they are today perpetual Native entities. *Supra* at 17-18. The state corporate form, standing alone, does nothing to support the notion that Congress in ANCSA somehow implicitly extinguished tribal jurisdiction over corporation lands, any more than if Congress had permitted the village tribes to organize nonshareholder corporations under federal or tribal law (as it did for Venetie and other tribes in the 1930s under the IRA, 25 U.S.C. § 477).

e. Once again, the legislative history confirms this reading of ANCSA. The concept of tribal village corporations was developed by a 1968 Task Force partly composed of several Native leaders. Under its bill, S. 2906, 90th Cong., 2d Sess. (1968) village lands would have gone not directly to tribes, but to new tribal enterprises formed either under the IRA, or under a new state law that would provide an array of special protections for 100 years (including inalienable stock). 1968 Senate Hearings 2-16, 74-78, 102-15, 491-98 (printing the bill, parallel state legislation and related materials). Each village–termed "an incorporated tribal group"–would also choose whether its 'corporate' lands would be held in trust or in fee. Notwithstanding petitioner's use of ellipses and omitted text to suggest otherwise, the "incorporated tribal group" was expressly understood to be different from any state "municipal corporation" that might already exist in a village.[49]

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[49] 1968 Senate Hearings 75 (Task Force Report) ("[T]he village-as-a-municipal-corporation shall be separated from the village-as-an-incorporated-tribal-group.") In its effort to convince the Court Alaska Natives intended to fully assimilate and embrace state law, and abandon tribal institutions, petitioner omits language essential to understanding the Native position in 1968. This position favored a village corporation in significant measure because it would *not* be a state municipality:

> The land and the money will not be given to villages as municipal cities and will not be given to the villages as tribal entities. Instead, business

(continued...)

Key to the Native proposal was that village corporations would provide uniquely portable benefits: as shareholders, individual tribal members could continue to reside on their tribal homelands or travel wherever they might choose, without ever losing their shareholder benefits. In this sense ANCSA would neither compel nor coerce Native people to remain in their villages.[50] This is the meaning of the village corporation concept that survived to final enactment. *See* 1970 Senate Report 136.

f. ANCSA and its considerable legislative history are devoid of any hint that in seeking the investment power of local corporations with portable shareholder benefits, tribes silently intended to self-destruct by eliminating their preexisting authority

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(...continued)

> corporations will be formed by the village members and the land and the money will go to these business corporations. This is very important because it separates the municipal corporation or the native group as a municipal corporation from the native group as a tribal entity.

1968 Senate hearings 575 (Barry Jackson) (underlined language omitted at Pet. Br. 35). Nor does Petitioner share with the Court that S. 2906, the proposal advanced by Mr. Jackson and the Natives, contemplated either state corporations or *tribal* corporations established under 25 U.S.C. § 477, terming both "tribal enterprise[s]." This is plain both in the very next paragraph (in addition to the bill itself), and in an earlier paragraph petitioner only partly quotes. 1968 Senate Hearings 89 ("[W]e have separated the native village as a municipal corporation from the native village as an incorporated tribal enterprise. And the lands and the money will be going to the incorporated tribal entity which will be gradually transformed into an ordinary business corporation with shares fully alienable. This is a gradual process. It takes about a hundred years to accomplish.")

[50] Petitioner quotes–but does not explain–Barry Jackson's remark that the village corporation vehicle was developed so as not to "freeze the natives to the land and to the villages and make it difficult or impossible for them to be mobile in American society today." Pet. Br. 35 (quoting 1968 Senate Hearings 575); *see also* Pet. Br. 29 n.18, 41, 90 (additional quotations of Mr. Jackson). Five pages later Mr. Jackson explains the portability idea: "[This] was a factor behind the adoption of the business corporation form because the stockholder can move anywhere and still retains...ownership interest in his corporation....[Y]ou will be able to share in the benefits of your corporation...whether you live in Minto or whether you work in Fairbanks or whether you are working outside Alaska even." 1968 Senate Hearings 580.

over their ancestral lands. In the case of Venetie, neither Congress's "plain and unambiguous" language, *Santa Fe*, 314 U.S. at 346, nor the "widely held, contemporaneous understanding," *Solem*, 465 U.S. at 471, "clearly evince" an intent to eliminate the Tribe's territorial sovereignty. *Id.* at 470. Rather, Congress's well-established intent to renounce BIA paternalism, maximize Native village autonomy, and preserve the Federal Government's protective role as trustee fully supports Venetie's continued sovereignty over its remote homelands.

CONCLUSION

The Venetie People seek only to continue governing their own affairs in their vast remote homeland, as they have done for centuries. For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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APPENDIX

Treaty With Russia
March 30, 1867
Article III, 15 Stat. 539, 542

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

Act of May 17, 1884
§ 8, c.53, 23 Stat. 24, 26

SEC. 8. That the said district of Alaska is hereby created a land district, and a United States land-office for said district is hereby located at Sitka * * * . *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: * * * *And provided also*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations

respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States.

Act of March 3, 1891
§ 15, c.561, 26 Stat. 1095, 1101

SEC. 15. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in Southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may prescribed from time to time by the Secretary of the Interior.

Act of June 6, 1900
§§ 1, 15, c. 786, 31 Stat. 321, 330

SEC. 1. That the territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said district is hereby established at Juneau: *Provided*, That the seat of government shall remain at Sitka until suitable grounds and buildings thereon shall be obtained

by purchase or otherwise at Juneau.

* * *

SEC. 27. The Indians or persons conducting schools or missions in the district shall not be disturbed in the possession of any lands now actually in their use or occupation, and the land, at any station not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is hereby directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong; but nothing contained in this Act shall be construed to put in force in the district the general land laws of the United States.

Act of May 17, 1906
c. 2469, __ Stat. 197

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of nonmineral land in the district of Alaska to any Indian or Eskimo of full or mixed blood who resides in and is a native of said district, and who is the head of a family, or is twenty-one years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and

nontaxable until otherwise provided by Congress. Any person qualified for an allotment as aforesaid shall have the preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres.

Act of June 2, 1924
c. 233, __ Stat. 253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

Act of May 25, 1926
c. 379, 44 Stat. 629-630

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where, upon the survey of a town site pursuant to section 11 of the Act of March 3, 1891 (Twenty-sixth Statutes, page 1095), and the regulations of the Department of the Interior under said Act, a tract claimed and occupied by an Indian or Eskimo of full or mixed blood, native of Alaska, has been or may be set apart to such Indian or Eskimo, the town site trustee is authorized to issue to him a deed therefor which shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior: *Provided,* That nothing herein

contained shall subject such tract to taxation, to levy and sale in satisfaction of the debts, contracts, or liabilities of the patentee, or to any claims of adverse occupancy or law of prescription: *Provided further*, That the approval by the Secretary of the Interior of the sale by an Indian or Eskimo of a tract deeded to him under this Act shall vest in the purchaser a complete and unrestricted title from the date of such approval.

SEC. 2. That whenever the Secretary of the Interior shall determine that it would be to the interest of the Indian or Eskimo occupant of land described in the preceding paragraph, he is authorized to extend the established streets and alleys of the town site upon and across the tract, and the deed issued to such occupant under this Act shall reserve to the town site the area covered by such streets and alleys as extended.

SEC. 3. That whenever he shall find nonmineral public lands in Alaska to be claimed and occupied by Indians or Eskimos of full or mixed blood, natives of Alaska, as a town or village, the Secretary of the Interior is authorized to have such lands surveyed into lots, blocks, streets, and alleys, and to issue a patent therefor to a trustee who shall convey to the individual Indian or Eskimo the land so claimed and occupied, exclusive of that embraced in streets or alleys: *Provided*, That any patent or deed to be issued under this section shall be subject to all the provisions, limitations, and restrictions of section 1 of this Act with respect to Indian and Eskimo claims to land occupied by them within the limits of town sites established or to be established under said Act of March 3, 1891.

SEC. 4. That the Secretary of the Interior is authorized to prescribe appropriate regulations for the administration of this Act.

Act of May 25, 1926
c. 379, 44 Stat. 629

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where, upon the survey of a town site pursuant to section 11 of the Act of March 3, 1891 (Twenty-sixth Statutes, page 1095), and the regulations of the Department of the Interior under said Act, a tract claimed and occupied by an Indian or Eskimo of full or mixed blood, native of Alaska, has been or may be set apart to such Indian or Eskimo, the town site trustee is authorized to issue to him a deed therefor which shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior: *Provided*, That nothing herein contained shall subject such tract to taxation, to levy and sale in satisfaction of the debts, contracts, or liabilities of the patentee, or to any claims of adverse occupancy or law of prescription: *Provided further*, That the approval by the Secretary of the Interior of the sale by an Indian or Eskimo of a tract deeded to him under this Act shall vest in the purchaser a complete and unrestricted title from the date of such approval.

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SEC. 4. That the Secretary of the Interior is authorized to prescribe appropriate regulations for the administration of this Act.

Indian Reorganization Act of June 18, 1934, as amended
25 U.S.C. § § 461-473

§ 461. On and after June 18, 1934, no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

§ 462. The existing periods of trust placed upon any Indian lands and any restriction or alienation thereof are hereby extended and continued until otherwise directed by Congress.

§ 463. (a) The Secretary of the Interior, if he shall find it to be in the public interest, is authorized to restore tribal ownership the remaining surplus lands of any Indian reservation opened before June 18, 1934, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: * * * .

* * *

§ 464. Except as herein provided in sections [461 through 479] of this title, no sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however,* That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs or lineal descendants of such member or any other person for whom the Secretary of the Interior determines that the United States may hold trust * * * .

§ 465. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians * * * .

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

* * *

§ 467. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by sections [461 through 479], or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

* * *

§ 470. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization.

* * *

§ 471. There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than $50,000 of such sum

shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

§ 472. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

§ 473. The provisions of sections [461 through 479] of this title shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that sections 469, 470, 471, 472, and 476 of this title shall apply to the Territory of Alaska: * * *.

* * *

§ 473a. Sections 461, 465, 467, 468, 475, 477, and 479 of this title shall after May 1, 1936, apply to the Territory of Alaska: Provided, That groups of Indians in Alaska not recognized prior to May 1, 1936, as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 470, 476, and 477 of this title.

* * *

§ 476. Organization of Indian tribes; constitution and bylaws and amendment thereof; special election.

(a) Any tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when—(1) ratified by a majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and (2) approved by the Secretary pursuant to subsection (d) of this section.

(b) Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) of this section for the adoption of a constitution or bylaws.

(c) (1) The Secretary shall call and hold an election as required by subsection (a) of this section—(A) within one hundred and eighty days after the receipt of a tribal request for an election to ratify a proposed constitution and bylaws, or to revoke such constitution and bylaws; or (B) within ninety days after receipt of a tribal request for election to ratify an amendment to the constitution and bylaws.

(2) During the time periods established by paragraph (1), the Secretary shall—(A) provide such technical advice and assistance as may be requested by the tribe or as the Secretary determines may be needed; and (B) review the final draft of the constitution and bylaws, or amendments thereto to determine if any provision therein is contrary to applicable laws.

(3) After the review provided in paragraph (2) and at least thirty days prior to the calling of the election, the Secretary shall notify the tribe, in writing, whether and in what manner the Secretary has found the proposed constitution and bylaws or amendments thereto to be contrary to applicable laws.

(d) (1) If an election called under subsection (a) of this section results in the adoption by the tribe of the proposed constitution and bylaws or amendments thereto, the Secretary shall approve the constitution and bylaws or amendments thereto within forty-five days after the election unless the Secretary finds that the proposed constitution, and bylaws or any amendments are contrary to applicable laws.

(2) If the Secretary does not approve or disapprove the constitution and bylaws or amendments within the forty-five days, the Secretary's approval shall be considered as given. Actions to enforce the provisions of this section may be brought in the appropriate Federal district court.

(e) In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments. The Secretary shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Office of Management and Budget and the Congress.

(f) Departments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 (25 U.S.C. 461 et seq., 48 Stat. 984) as amended, or any other Act of Congress, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.

(g) Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on May 31, 1994, and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.

§ 477. The Secretary of the Interior may, upon petition by any tribe, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified by the governing body of such tribe. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding twenty-five years any trust or restricted lands included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

* * *

§ 479. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act,

Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

§ 496 (repealed 1976). That the Secretary of the Interior is hereby authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 8 of the Act of May 17, 1884 (23 Stat. 26); or by section 14 or section 15 of the Act of March 3, 1891 (26 Stat. 1101); or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: *Provided*, That the designation by the Secretary of the Interior of any such area of land as a reservation shall be effective only upon its approval by the vote, by secret ballot, of a majority of the Indian or Eskimo residents thereof who vote at a special election duly called by the Secretary of the Interior upon thirty days' notice: *Provided, however*, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote: *Provided further*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

Act of February 25, 1948
c.72, 62 Stat. 35

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the trustee or trustees to whom a patent has been issued for a townsite surveyed pursuant to section 11 of the Act of March 3, 1891 (26 Stat. 1095), or section 3 of the Act of May 25, 1926 (44 Stat. 629), upon a finding by the Secretary of the Interior or his authorized representative that any Alaska native who claims and occupies a tract of land within such townsite is competent to manage his own affairs and has petitioned the Secretary or his authorized representative for an unrestricted deed, or shall issue to such native an unrestricted deed, and thereafter all restrictions as to sale, encumbrance, or taxation of said lands shall be removed, but said land shall not be liable to the satisfaction of any debt, except obligations owed the Federal Government, contracted prior to the issuing of such deed.

Act of June 25, 1948, as amended
18 U.S.C. § 1151

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not

been extinguished, including rights-of-way running through the same.

Alaska Statehood Act
of July 7, 1958, as amended
72 Stat. 339

SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any claims or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress may prescribe or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: *Provided*, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United State applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the

determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this act. *And provided further*, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress may prescribe or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation.

Alaska Native Claims Settlement Act of 1971
as amended
Title 43
United States Code

§ 1601. Congressional findings and declaration of policy

Congress finds and declares that--

(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;

(c) no provision of this chapter shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State or Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of the United States Government, to make a study of all Federal programs primarily designed to benefit Native people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of December 18, 1971;

* * *

(g) no provision of this chapter shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska. For this purpose only, the terms "Indian reservation" and "trust or restricted Indian-owned land areas" in Public Law 89-136, the Public Works and Economic Development Act of 1965, as amended [42 U.S.C. 3121 et seq.], shall be interpreted to include lands granted to Natives under this chapter as long as such lands remain in the ownership of the Native villages or the Regional Corporations.

* * *

§ 1602. Definitions

For the purposes of this chapter, the term--

* * *

(c) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title, or which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;

* * *

(g) "Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this chapter;

* * *

(i) "Municipal Corporation" means any general unit of municipal government under the laws of the State of Alaska;

(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this chapter.

(k) "Fund" means the Alaska Native Fund in the Treasury of the United States established by section 1605 of this title;

* * *

(m) "Native Corporation" means any Regional Corporation, any Village Corporation, any Urban Corporation, and any Group Corporation;

(n) "Group Corporation" means an Alaska Native Group Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of a Native group in accordance with the terms of this chapter;

(o) "Urban Corporation" means an Alaska Native Urban Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of an urban community of Natives in accordance with the terms of this chapter;

(p) "Settlement Common Stock" means stock of a Native Corporation issued pursuant to section 1606(g)(1) of this title that carries with it the rights and restrictions listed in section 1606(h)(1) of this title;

(q) "Replacement Common Stock" means stock of a Native Corporation issued in exchange for Settlement Common Stock pursuant to section 1606(h)(3) of this title;

(r) "Descendant of a Native" means--

(1) a lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

(2) an adoptee of a Native or of a descendant of a Native, whose adoption--

(A) occurred prior to his or her majority, and

(B) is recognized at law or in equity;

(s) "Alienability restrictions" means the restrictions imposed on Settlement Common Stock by section 1606(h)(1)(B) of this title;

(t) "Settlement Trust" means a trust--

(1) established and registered by a Native Corporation under the laws of the State of Alaska pursuant to a resolution

of its shareholders, and

(2) operated for the sole benefit of the holders of the corporation's Settlement Common Stock in accordance with section 1629e of this title and the laws of the State of Alaska.

§ 1603. Declaration of settlement

(a) Aboriginal title extinguishment through prior land and water area conveyances

All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) Aboriginal title and claim extinguishment where based on use and occupancy; submerged lands underneath inland and offshore water areas and hunting or fishing rights included

All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) Aboriginal claim extinguishment where based on right, title, use, or occupancy of land or water areas; domestic statute or treaty relating to use and occupancy; or foreign laws; pending claims

All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use,

or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

* * *

§ 1605. Alaska Native Fund

(a) Establishment in Treasury; deposits into Fund of general fund, interest, and revenue sharing moneys

There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:

(1) $462,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:

* * *

(3) $500,000,000 pursuant to the revenue sharing provisions of section 1608 of this title.

* * *

(c) Distribution of Fund moneys among organized Regional Corporations; basis as relative number of Native enrollees in each region; reserve for payment of attorney and other fees; retention of share in Fund until organization of corporation

After completion of the roll prepared pursuant to section 1604 of this title, all money in the Fund, except money reserved as provided in section 1619 of this title for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to section 1606 of this title on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized.

§ 1605 note

Pub.L. 96-487, Title XIV, § 1414, Dec. 2, 1980, 94 Stat. 2498, provided that:

"(a) Moneys appropriated for deposit in the Alaska Native Fund for the fiscal year following the enactment of this Act, [Dec. 2, 1980], shall, for the purposes of section 5 of Public Law 94-204 [set out as a note under this section] only, be deposited into the Alaska Native Fund on the first day of the fiscal year for which the moneys are appropriated, and shall be distributed at the end of the first quarter of the fiscal year in accordance with section 6(c) of the Alaska Native Claims Settlement Act [subsec. (c) of this section] notwithstanding any other provision of law.

"(b) For the fiscal year in which this Act is enacted [fiscal year 1981], the money appropriated shall be deposited within 10 days of enactment [Dec. 2, 1980], unless it has already been deposited in accordance with existing law, and shall be distributed no later than the end of the quarter following the quarter in which the money is deposited: *Provided*, That if the money is already deposited at the time of enactment of this Act, it must be distributed at the end of the quarter in which

this Act is enacted.

"(c) Notwithstanding section 38 of the Fiscal Year Adjustment Act [section 38 of Pub. L. 94-273, which amended this section] or any other provisions of law, interest earned from the investment of appropriations made pursuant to the Act of July 31, 1976 (Public Law 94-373; 90 Stat. 1051) [not classified to the Code], and deposited in the Alaska Native Fund on or after October 1, 1976, shall be deposited in the Alaska Native Fund within thirty days after enactment of this Act [Dec. 2, 1980] and shall be distributed as required by section 6(c) of the Alaska Native Claims Settlement Act [subsec. (c) of this section]."

Alaska Native Fund Viewed as Trust for Indian Tribes for Purposes of Interest and Investment

Pub.L. 94-204, § 5, Jan. 2, 1976, 89 Stat. 1147, provided that: "For purposes of the first section of the Act of February 12, 1929 (45 Stat. 1164), as amended [section 161a of Title 25, Indians], and the first section of the Act of June 24, 1938 (52 Stat. 1037) [section 162a of Title 25], the Alaska Native Fund shall, pending distributions under section 6(c) of the Settlement Act [subsec. (c) of this section], be considered to consist of funds held in trust by the Government of the United States for the benefit of Indian tribes: *Provided*, That nothing in this section shall be construed to create or terminate any trust relationship between the United States and any corporation or individual entitled to receive benefits under the Settlement Act [this chapter]."

§ 1606. Regional Corporations

(a) Division of Alaska into twelve geographic regions; common heritage and common interest of region; area of region commensurate with operations of Native association; boundary disputes, arbitration

For purposes of this chapter, the State of Alaska shall be divided by the Secretary within one year after December 18, 1971, into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

(b) Region mergers; limitation

The Secretary may, on request made within one year of December 18, 1971, by representative and responsible leaders of the Native associations listed in subsection (a) of this section, merge two or more of the twelve regions: *Provided*, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

* * *

(d) Incorporation; business for profit; eligibility for benefits; provisions in articles for carrying out chapter

Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this chapter so long as it is organized and functions in accordance with this chapter. The articles of incorporation shall include provisions necessary to carry out the terms of this chapter.

(e) Original articles and bylaws: approval by Secretary prior to filing, submission for approval; amendments to articles: approval by Secretary; withholding approval in event of creation of inequities among Native individuals or groups

The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after December 18, 1971. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) Board of directors; management; stockholders; provisions in articles or bylaws for number, term and method of election

The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

(g) Issuance of stock

(1) Settlement Common Stock

(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this chapter) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 1604 of this title.

(B)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to--

(I) Natives born after December 18, 1971, and, at the further option of the Corporation, descendants of Natives born after December 18, 1971,

(II) Natives who were eligible for enrollment pursuant to section 1604 of this title but were not so enrolled, or

(III) Natives who have attained the age of 65, for no consideration or for such consideration and upon such terms and conditions as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

(iii) The amendment authorized by clause (i) may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) of this section or section 1629c(d) of this title) shall be deemed canceled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) of this section unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be

deemed to be amended to authorize such class vote.

(C)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

* * *

(h) Settlement Common Stock

(1) Rights and restrictions

(A) Except as otherwise expressly provided in this chapter, Settlement Common Stock of a Regional Corporation shall--

(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

(ii) permit the holder to receive dividends or other distributions from the corporation; and

(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be--

(i) sold;

(ii) pledged;
(iii) subjected to a lien or judgment execution;
(iv) assigned in present or future;
(v) treated as an asset under--
(I) Title 11 or any successor statute,
(II) any other insolvency or moratorium law, or
(III) other laws generally affecting creditors' rights;
or
(vi) otherwise alienated.

(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native--

(i) pursuant to a court decree of separation, divorce, or child support;

(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, nephew, or (if the holder has reached the age of majority as defined by the laws of the State of Alaska) brother or sister.

(2) Inheritance of Settlement Common Stock

(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless canceled in accordance with subsection (g)(1)(B)(iii) of this section) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be canceled.

(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of intestate succession to a person not a Native or a descendant of a Native after February 3, 1988, if--

(i) the corporation--

(I) amends its articles of incorporation to authorize such purchases, and

(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

(C) Settlement Common Stock of a Regional Corporation--

(i) transferred by will or pursuant to applicable laws of intestate succession after February 3, 1988, or

(ii) transferred by any means prior to February 3, 1988,

to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

(3) Replacement Common Stock

(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 1629c of this title, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed canceled, and shares of Replacement Common Stock of the appropriate class shall be issued to each shareholder, share for share, subject only to

subparagraph (B) and to such restrictions consistent with this chapter as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

(B)(i) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection (g)(1)(B)(iii) of this section shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that subsection.

(ii) Prior to the termination of alienability restrictions, the board of directors of the corporation shall approve a resolution to provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) of this section shall be exchanged either for--

(I) a share of Replacement Common Stock that carries such right, or

(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

(iii) Replacement Common Stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) of this section shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of

incorporation to impose upon Replacement Common Stock one or more of the following--

(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

(ii) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's immediate family who are Natives or descendants of Natives, the first right to purchase, on reasonable terms, the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

(E) Replacement Common Stock shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.

* * *

(i) Certain natural resource revenues; distribution among twelve Regional Corporations; computation of amount; subsection inapplicable to thirteenth Regional Corporation

Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this chapter shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region

pursuant to section 1604 of this title. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

(2) For purposes of this subsection, the term "revenues" does not include any benefit received or realized for the use of losses incurred or credits earned by a Regional Corporation.

(j) Corporate funds and other net income, distribution among: stockholders of Regional Corporations; Village Corporations and nonresident stockholders; and stockholders of thirteenth Regional Corporation

During the five years following December 18, 1971, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 1605 of this title (Alaska Native Fund), and under subsection (i) of this section (revenues from the timber resources and subsurface estate patented to it pursuant to this chapter), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under section 1605 of this title shall be distributed to the stockholders.

(k) Distributions among Village Corporations; computation of amount

Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional

Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of residents in all villages.

(l) Distributions to Village Corporations; village plan: withholding funds until submission of plan for use of money; joint ventures and joint financing of projects; disagreements, arbitration of issues as provided in articles of Regional Corporation

Funds distributed to a Village Corporation may be withheld until the village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

(m) Distributions among Village Corporations in a region; computation of dividends for nonresidents of village; financing regional projects with equitably withheld dividends and Village Corporation funds

When funds are distributed among Village Corporations in a region, an amount computed as follows shall be distributed as dividends to the class of stockholders who are not residents of those villages: The amount distributed as dividends shall bear the same ratio to the amount distributed among the Village Corporations that the number of shares of stock registered on the books of the Regional Corporation in the names of nonresidents of villages bears to the number of shares of stock

registered in the names of village residents: *Provided*, That an equitable portion of the amount distributed as dividends may be withheld and combined with Village Corporation funds to finance projects that will benefit the region generally.

* * *

(o) Annual audit; place; availability of papers, things, or property to auditors to facilitate audits; verification of transactions; report to stockholders

The accounts of the Regional Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified, or licensed by a regulatory authority of the State or the United States. The audits shall be conducted at the place or places where the accounts of the Regional Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers, things, or property belonging to or in use by the Regional Corporation and necessary to facilitate the audits shall be available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agent, and custodians shall be afforded to such person or persons. Each audit report or a fair and reasonably detailed summary thereof shall be transmitted to each stockholder.

(p) Federal-State conflict of laws

In the event of any conflict between the provisions of this section and the laws of the State of Alaska, the provisions of this section shall prevail.

* * * *

§ 1607. Village Corporations

(a) Organization of Corporation prerequisite to receipt of patent to lands or benefits under chapter

The Native residents of each Native village entitled to receive lands and benefits under this chapter shall organize as a business for profit or nonprofit corporation under the laws of the State before the Native village may receive patent to lands or benefits under this chapter, except as otherwise provided.

(b) Regional Corporation: approval of initial articles; review and approval of amendments to articles and annual budgets; assistance in preparation of articles and other documents

The initial articles of incorporation for each Village Corporation shall be subject to the approval of the Regional Corporation for the region in which the village is located. Amendments to the articles of incorporation and the annual budgets of the Village Corporations shall, for a period of five years, be subject to review and approval by the Regional Corporation. The Regional Corporation shall assist and advise Native villages in the preparation of articles of incorporation and other documents necessary to meet the requirements of this subsection.

(c) Applicability of section 1606

The provisions of subsections (g), (h) (other than paragraph (4)), and (o) of section 1606 of this title shall apply in all respects to Village Corporations, Urban Corporations, and

Group Corporations.

§ 1608. Revenue sharing

* * *

(b) Interim payments into Alaska Native Fund based on percentage of gross value of produced or removed minerals and of rentals and bonuses; time of payment

With respect to conditional leases and sales of minerals heretofore or hereafter made pursuant to section 6(g) of the Alaska Statehood Act, and with respect to mineral leases of the United States that are or may be subsumed by the State under section 6(h) of the Alaska Statehood Act, until such time as the provisions of subsection (c) of this section become operative the State shall pay into the Alaska Native Fund from the royalties, rentals, and bonuses hereafter received by the State (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under such leases or sales) of such minerals produced or removed from such lands, and (2) 2 per centum of all rentals and bonuses under such leases or sales, excluding bonuses received by the State at the September 1969 sale of minerals from tentatively approved lands and excluding rentals received pursuant to such sale before December 18, 1971. Such payment shall be made within sixty days from the date the revenues are received by the State.

(c) Patents; royalties: reservation of percentage of gross value of produced or removed minerals and rentals and bonuses from disposition of minerals

Each patent hereafter issued to the State under the Alaska

Statehood Act, including a patent of lands heretofore selected and tentatively approved, shall reserve for the benefit of the Natives, and for payment into the Alaska Native Fund, (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under any disposition by the State) of the minerals thereafter produced or removed from such lands, and (2) 2 per centum of all revenues thereafter derived by the State from rentals and bonuses from the disposition of such minerals.

(d) Distribution of bonuses, rentals, and royalties from Federal disposition of minerals in public lands; payments into Alaska Native Fund based on percentage of gross value of produced minerals and of rentals and bonuses; Federal and State share calculation on remaining balance

All bonuses, rentals, and royalties received by the United States after December 18, 1971, from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

(e) Federal enforcement; State underpayment: deductions from grants in aid or other Federal assistance equal to underpayment and deposit of such amount in Fund

The provisions of this section shall be enforceable by the United States for the benefit of the Natives, and in the event of default by the State in making the payments required, in addition to any other remedies provided by law, there shall be deducted annually by the Secretary of the Treasury from any grant-in-aid or from any other sums payable to the State under any provision of Federal law an amount equal to any such underpayment, which amount shall be deposited in the Fund.

* * *

§ 1610. Withdrawal of public lands

(a) Description of withdrawn public lands; exceptions; National Wildlife Refuge lands exception; time of withdrawal

(1) The following public lands are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

(A) The lands in each township that encloses all or part of any Native village identified pursuant to subsection (b) of this section;

(B) The lands in each township that is contiguous to or corners on the township that encloses all or part of such Native village; and

(C) The lands in each township that is contiguous to or corners on a township containing lands withdrawn by paragraph (B) of this subsection.

The following lands are excepted from such withdrawal: lands in the National Park System and lands withdrawn or reserved

for national defense purposes other than Naval Petroleum Reserve Numbered 4.

(2) All lands located within the townships described in subsection (a)(1) hereof that have been selected by, or tentatively approved to, but not yet patented to, the State under the Alaska Statehood Act are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from the creation of third party interests by the State under the Alaska Statehood Act.

(3)(A) If the Secretary determines that the lands withdrawn by subsections (a)(1) and (2) hereof are insufficient to permit a Village or Regional Corporation to select the acreage it is entitled to select, the Secretary shall withdraw three times the deficiency from the nearest unreserved, vacant and unappropriated public lands. In making this withdrawal the Secretary shall, insofar as possible, withdraw public lands of a character similar to those on which the village is located and in order of their proximity to the center of the Native village: *Provided*, That if the Secretary, pursuant to section 1616, and 1621(e) of this title determines there is a need to expand the boundaries of a National Wildlife Refuge to replace any acreage selected in the Wildlife Refuge System by the Village Corporation the withdrawal under this section shall not include lands in the Refuge.

(B) The Secretary shall make the withdrawal provided for in subsection (3)(A) hereof on the basis of the best available information within sixty days of December 18, 1971, or as soon thereafter as practicable.

(b) List of Native Villages subject to chapter; review; eligibility for benefits; expiration of withdrawals for villages; alternative eligibility; eligibility of unlisted villages

(1) The Native villages subject to this chapter are as follows:

NAME OF PLACE AND REGION

Afognak, Afognak Island.
Akhiok, Kodiak.
Akiachak, Southwest Coastal Lowland.
Akiak, Southwest Coastal Lowland.
Akutan, Aleutian.
Alakanuk, Southwest Coastal Lowland.
Alatna, Koyukuk-Lower Yukon.
Aleknagik, Bristol Bay.
Allakaket, Koyukuk-Lower Yukon.
Ambler, Bering Strait.
Anaktuvuk, Pass, Arctic Slope.
Andreafsey, Southwest Coastal Lowland.
Aniak, Southwest Coastal Lowland.
Anvik, Koyukuk-Lower Yukon.
Arctic Village, Upper Yukon-Porcupine.
Atka, Aleutian.
Atkasook, Arctic Slope.
Atmautluak, Southwest Coastal Lowland.
Barrow, Arctic Slope.
Beaver, Upper Yukon-Porcupine.
Belkofsky, Aleutian.
Bethel, Southwest Coastal Lowland.
Bill Moore's, Southwest Coastal Lowland.
Biorka, Aleutian.
Birch Creek, Upper Yukon-Porcupine.
Brevig Mission, Bering Strait.
Buckland, Bering Strait.
Candle, Bering Strait.
Cantwell, Tanana.
Canyon Village, Upper Yukon-Porcupine.

Chalkyitsik, Upper Yukon-Porcupine.
Chanilut, Southwest Coastal Lowland.
Cherfornak, Southwest Coastal Lowland.
Chevak, Southwest Coastal Lowland.
Chignik, Kodiak.
Chignik Lagoon, Kodiak.
Chignik Lake, Kodiak.
Chistochina, Copper River.
Chitina, Copper River.
Chukwuktoligamute, Southwest Coastal Lowland.
Circle, Upper Yukon-Porcupine.
Clark's Point, Bristol Bay.
Copper Center, Copper River.
Crooked Creek, Upper Kuskokwim.
Deering, Bering Strait.
Dillingham, Bristol Bay.
Dot Lake, Tanana.
Eagle, Upper Yukon-Porcupine.
Eek, Southwest Coastal Lowland.
Egegik, Bristol Bay.
Eklutna, Cook Inlet.
Ekuk, Bristol Bay.
Ekwok, Bristol Bay.
Elim, Bering Strait.
Emmonak, Southwest Coastal Lowland.
English Bay, Cook Inlet.
False Pass, Aleutian.
Fort Yukon, Upper Yukon-Porcupine.
Gakona, Copper River.
Galena, Koyukuk-Lower Yukon.
Gambell, Bering Sea.
Georgetown, Upper Kuskokwim.
Golovin, Bering Strait.
Goodnews Bay, Southwest Coastal Lowland.

Grayling, Koyukuk-Lower Yukon.
Gulkana, Copper River.
Hamilton, Southwest Coastal Lowland.
Holy Cross, Koyukuk-Lower Yukon.
Hooper Bay, Southwest Coastal Lowland.
Hughes, Koyukuk-Lower Yukon.
Huslia, Koyukuk-Lower Yukon.
Igiugig, Bristol Bay.
Iliamna, Cook Inlet.
Inalik, Bering Strait.
Ivanof Bay, Aleutian.
Kaguyak, Kodiak.
Kaktovik, Arctic Slope.
Kalskag, Southwest Coastal Lowland.
Kaltag, Koyukuk-Lower Yukon.
Karluk, Kodiak.
Kasigluk, Southwest Coastal Lowland.
Kiana, Bering Strait.
King Cove, Aleutian.
Kipnuk, Southeast Coastal Lowland.
Kivalina, Bering Strait.
Kobuk, Bering Strait.
Kokhanok, Bristol Bay.
Koliganek, Bristol Bay.
Kongiganak, Southwest Coastal Lowland.
Kotlik, Southwest Coastal Lowland.
Kotzebue, Bering Strait.
Koyuk, Bering Strait.
Koyukuk, Koyukuk-Lower Yukon.
Kwethluk, Southwest Coastal Lowland.
Kwigillingok, Southwest Coastal Lowland.
Larsen Bay, Kodiak.
Levelock, Bristol Bay.
Lime Village, Upper Kuskokwim.

Lower Kalskag, Southwest Coastal Lowland.
McGrath, Upper Kuskokwim.
Makok, Koyukuk-Lower Yukon.
Manley Hot Springs, Tanana.
Manokotak, Bristol Bay.
Marshall, Southwest Coastal Lowland.
Mary's Igloo, Bering Strait.
Medfra, Upper Kuskokwim.
Mekoryuk, Southwest Coastal Lowland.
Mentasta Lake, Copper River.
Minchumina Lake, Upper Kuskokwim.
Minto, Tanana.
Mountain Village, Southwest Coastal Lowland.
Nabesna Village, Tanana.
Naknek, Bristol Bay.
Napaimute, Upper Kuskokwim.
Napakiak, Southwest Coastal Lowland.
Napaskiak, Southwest Coastal Lowland.
Nelson Lagoon, Aleutian.
Nenana, Tanana.
Newhalen, Cook Inlet.
New Stuyahok, Bristol Bay.
Newtok, Southwest Coastal Lowland.
Nightmute, Southwest Coastal Lowland.
Nikolai, Upper Kuskokwim.
Nikolski, Aleutian.
Ninilchik, Cook Inlet.
Noatak, Bering Strait.
Nome, Bering Strait.
Nondalton, Cook Inlet.
Nooiksut, Arctic Slope.
Noorvik, Bering Strait.
Northeast Cape, Bering Sea.
Northway, Tanana.

Nulato, Koyukuk-Lower Yukon.
Nunapitchuk, Southwest Coastal Lowland.
Ohogamiut, Southwest Coastal Lowland.
Old Harbor, Kodiak.
Oscarville, Southwest Coastal Lowland.
Ouzinkie, Kodiak.
Paradise, Koyukuk-Lower Yukon.
Pauloff Harbor, Aleutian.
Pedro Bay, Cook Inlet.
Perryville, Kodiak.
Pilot Point, Bristol Bay.
Pilot Station, Southwest Coastal Lowland.
Pitkas Point, Southwest Coastal Lowland.
Platinum, Southwest Coastal Lowland.
Point Hope, Artic Slope.
Point Lay, Arctic Slope.
Portage Creek (Ohgsenakale), Bristol Bay.
Port Graham, Cook Inlet.
Port Heiden (Meshick), Aleutian.
Port Lions, Kodiak.
Quinhagak, Southwest Coastal Lowland.
Rampart, Upper Yukon-Porcupine.
Red Devil, Upper Kuskokwim.
Ruby, Koyukuk-Lower Yukon.
Russian Mission or Chauthalue (Kuskokwim), Upper Kuskokwim.
Russian Mission (Yukon), Southwest Coastal Lowland.
St. George, Aleutian.
St. Mary's, Southwest Coastal Lowland.
St. Michael, Bering Strait.
St. Paul, Aleutian.
Salamatof, Cook Inlet.
Sand Point, Aleutian.
Savonoski, Bristol Bay.

Savoonga, Bering Sea.
Scammon Bay, Southwest Coastal Lowland.
Selawik, Bering Strait.
Seldovia, Cook Inlet.
Shageluk, Koyukuk-Lower Yukon.
Shaktoolik, Bering Strait.
Sheldon's Point, Southwest Coastal Lowland.
Shishmaref, Bering Strait.
Shungnak, Bering Strait.
Slana, Copper River.
Sleetmute, Upper Kuskokwim.
South Naknek, Bristol Bay.
Squaw Harbor, Aleutian.
Stebbins, Bering Strait.
Stevens Village, Upper Yukon-Porcupine.
Stony River, Upper Kuskokwim.
Takotna, Upper Kuskokwim.
Tanacross, Tanana.
Tanana, Koyukuk-Lower Yukon.
Tatilek, Chugach.
Tazlina, Copper River.
Telida, Upper Kuskokwim.
Teller, Bering Strait.
Tetlin, Tanana.
Togiak, Bristol Bay.
Toksook Bay, Southwest Coastal Lowland.
Tulusak, Southwest Coastal Lowland.
Tuntutuliak, Southwest Coastal Lowland.
Tununak, Southwest Coastal Lowland.
Twin Hills, Bristol Bay.
Tyonek, Cook Inlet.
Ugashik, Bristol Bay.
Unalakleet, Bering Strait.
Unalaska, Aleutian.

Unga, Aleutian.
Uyak, Kodiak.
Venetie, Upper Yukon-Porcupine.
Wainwright, Arctic Slope.
Wales, Bering Strait.
White Mountain, Bering Strait.

(2) Within two and one-half years from December 18, 1971, the Secretary shall review all of the villages listed in subsection (b)(1) hereof, and a village shall not be eligible for land benefits under section 1613(a) and (b) of this title, and any withdrawal for such village shall expire, if the Secretary determines that--

(A) less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; or,

(B) the village is of a modern and urban character, and the majority of the residents are non-Native.

Any Native group made ineligible by this subsection shall be considered under section 1613(h) of this title.

(3) Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this chapter and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from December 18, 1971, determines that--

(A) twenty-five or more Natives were residents of an established village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; and

(B) the village is not of a modern and urban character, and a majority of the residents are Natives.

§ 1611. Native land selections

(a) Acreage limitation; proximity of selections and size of sections and units; waiver

(1) During a period of three years from December 18, 1971, the Village Corporation for each Native village identified pursuant to section 1610 of this title shall select, in accordance with rules established by the Secretary, all of the township or townships in which any part of the village is located, plus an area that will make the total selection equal to the acreage to which the village is entitled under section 1613 of this title. The selection shall be made from lands withdrawn by section 1610(a) of this title: *Provided*, That no Village Corporation may select more than 69,120 acres from lands withdrawn by section 1610(a)(2) of this title, and not more than 69,120 acres from the National Wildlife Refuge System, and not more than 69,120 acres in a National Forest: *Provided further*, That when a Village Corporation selects the surface estate to lands within the National Wildlife Refuge System or Naval Petroleum Reserve Numbered 4, the Regional Corporation for that region may select the subsurface estate in an equal acreage from other lands withdrawn by section 1610(a) of this title within the region, if possible.

(2) Selections made under this subsection (a) of this section shall be contiguous and in reasonably compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than 1,280 acres. *Provided*, That the Secretary in his discretion and upon the request of the concerned Village Corporation, may waive the whole section requirement where--

(A)(i) a portion of available public lands of a section is separated from other available public lands in the same section

by lands unavailable for selection or by a meanderable body of water;

(ii) such waiver will not result in small isolated parcels of available public land remaining after conveyance of selected lands to Native Corporations; and

(iii) such waiver would result in a better land ownership pattern or improved land or resource management opportunity; or

(B) the remaining available public lands in the section have been selected and will be conveyed to another Native Corporation under this chapter.

(b) Allocation; reallocation considerations

The difference between twenty-two million acres and the total acreage selected by Village Corporations pursuant to subsection (a) of this section shall be allocated by the Secretary among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) on the basis of the number of Natives enrolled in each region. Each Regional Corporation shall reallocate such acreage among the Native villages within the region on an equitable basis after considering historic use, subsistence needs, and population. The action of the Secretary or the Corporation shall not be subject to judicial review. Each Village Corporation shall select the acreage allocated to it from the lands withdrawn by section 1610(a) of this title.

(c) Computation

The difference between thirty-eight million acres and the 22 million acres selected by Village Corporations pursuant to subsections (a) and (b) of this section shall be allocated among the eleven Regional Corporations (which excludes the Regional

Corporation for southeastern Alaska) as follows:

(1) The number of acres each Regional Corporation is entitled to receive shall be computed (A) by determining on the basis of available data the percentage of all land in Alaska (excluding the southeastern region) that is within each of the eleven regions, (B) by applying that percentage to thirty-eight million acres reduced by the acreage in the southeastern region that is to be selected pursuant to section 1615 of this title, and (C) by deducting from the figure so computed the number of acres within that region selected pursuant to subsections (a) and (b) of this section.

* * *

§ 1613. Conveyance of lands

(a) Native villages listed in section 1610 and qualified for land benefits; patents for surface estates; issuance; acreage

Immediately after selection by a Village Corporation for a Native village listed in section 1610 of this title which the Secretary finds is qualified for land benefits under this chapter, the Secretary shall issue to the Village Corporation a patent to the surface estate in the number of acres shown in the following table:

If the village had on the 1970 census enumeration date a Native population between--	It shall be entitled to a patent to an area of public lands equal to--
25 and 99	69,120 acres.
100 and 199	92,160 acres.
200 and 399	115,200 acres.
400 and 599	138,240 acres.

600 or more ..... 161,280 acres.

The lands patented shall be those selected by the Village Corporation pursuant to section 1611(a) of this title. In addition, the Secretary shall issue to the Village Corporation a patent to the surface estate in the lands selected pursuant to section 1611(b) of this title.

(b) Native villages listed in section 1615 and qualified for land benefits; patents for surface estates; issuance; acreage

Immediately after selection by any Village Corporation for a Native village listed in section 1615 of this title which the Secretary finds is qualified for land benefits under this chapter, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands patented shall be the lands within the township or townships that enclose the Native village, and any additional lands selected by the Village Corporation from the surrounding townships withdrawn for the Native village by section 1615(a) of this title.

(c) Patent requirements; order of conveyance; vesting date; advisory and appellate functions of Regional Corporations on sales, leases, or other transactions prior to final commitment

Each patent issued pursuant to subsections (a) and (b) of this section shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as of December 18, 1971 (except that occupancy of tracts located in the

Pribilof Islands shall be determined as of the date of initial conveyance of such tracts to the appropriate Village Corporation) as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied as of December 18, 1971, by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres unless the Village Corporation and the Municipal Corporation or the State in trust can agree in writing on an amount which is less than one thousand two hundred and eighty acres: Provided further, That any net revenues derived from the sale of surface resources harvested or extracted from lands reconveyed pursuant to this subsection shall be paid to the Village Corporation by the Municipal Corporation or the State in trust: Provided, however, That the word "sale", as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Municipal Corporation or the State in trust, nor shall it include the issuance of free use permits or other

authorization for such purposes;

(4) the Village Corporation shall convey to the Federal Government, State, or to the appropriate Municipal Corporation, title to the surface estate for airport sites, airway beacons, and other navigation aids as such existed on December 18, 1971, together with such additional acreage and/or easements as are necessary to provide related governmental services and to insure safe approaches to airport runways as such airport sites, runways, and other facilities existed as of December 18, 1971; and

(5) for a period of ten years after December 18, 1971, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

There is authorized to be appropriated such sums as may be necessary for the purpose of providing technical assistance to Village Corporations established pursuant to this chapter in order that they may fulfill the reconveyance requirements of this subsection. The Secretary may make funds available as grants to ANCSA or nonprofit corporations that maintain in-house land planning and management capabilities.

* * *

(f) Patents to Village Corporations for surface estates and to Regional Corporations for subsurface estates; excepted lands; mineral rights, consent of Village Corporations

When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b) of this section, he shall issue to the Regional Corporation

for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in section 1611(a)(1) of this title: *Provided*, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

* * *

(h) Authorization for land conveyances; surface and subsurface estates

The Secretary is authorized to withdraw and convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 1610 and 1615 of this title, and follows:

(1) The Secretary may withdraw and convey to the appropriate Regional Corporation fee title to existing cemetery sites and historical places. Only title to the surface estate shall be conveyed for lands located in a Wildlife Refuge, when the cemetery or historical site is greater than 640 acres.

(2) The Secretary may withdraw and convey to a Native group that does not qualify as a Native village, if it incorporates under the laws of Alaska, title to the surface estate in not more than 23,040 acres surrounding the Native group's locality. The subsurface estate in such land shall be conveyed to the appropriate Regional Corporation unless the lands are located in a Wildlife Refuge;

(3) The Secretary may withdraw and convey to the Natives residing in Sitka, Kenai, Juneau, and Kodiak, if they

incorporate under the laws of Alaska, the surface estate of lands of a similar character in not more than 23,040 acres of land, which shall be located in reasonable proximity to the municipalities. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporation unless the lands are located in a Wildlife Refuge;

(4) The Secretary shall withdraw only such lands surrounding the villages and municipalities as are necessary to permit the conveyance authorized by paragraphs (2) and (3) to be planned and effected;

(5) The Secretary may convey to a Native, upon application within two years from December 18, 1971, the surface estate in not to exceed 160 acres of land occupied by the Native as a primary place of residence on August 31, 1971. Determination of occupancy shall be made by the Secretary, whose decision shall be final. The subsurface estate in such lands shall be conveyed to the appropriate Regional Corporations unless the lands are located in a Wildlife Refuge;

(6) The Secretary shall charge against the 2 million acres authorized to be conveyed by this section all allotments approved pursuant to section 1617 of this title during the four years following December 18, 1971. Any minerals reserved by the United States pursuant to the Act of March 8, 1922 (42 Stat. 415), as amended [43 U.S.C. 270-11 to 270-13], in a Native Allotment approved pursuant to section 1617 of this title during the period December 18, 1971, through December 18, 1975, shall be conveyed to the appropriate Regional Corporation, unless such lands are located in a Wildlife Refuge or in the Lake Clark areas as provided in section 12 of the Act of January 2, 1976 (Public Law 94-204), as amended.

(7) The Secretary may withdraw and convey lands out of the National Wildlife Refuge System and out of the National

Forests, for the purposes set forth in paragraphs (1), (2), (3), and (5) of this subsection; and

(8)(A) Any portion of the 2 million acres not conveyed by this subsection shall be allocated and conveyed to the Regional Corporations on the basis of population.

(B) Such allocation as the Regional Corporation for southeastern Alaska shall receive under this paragraph shall be selected and conveyed from lands that were withdrawn by sections 1615(a) and 1615(d) of this title and not selected by the Village Corporations in southeastern Alaska; * * * .

* * *

§ 1613 note

Pub.L. 94-204, § 2, Jan. 2, 1976, 89 Stat. 1146, as amended by Pub.L. 96-487, Title XIV, § 1411, Dec. 2, 1980, 94 Stat. 2497; Pub.L. 99-396, § 22, Aug. 27, 1986, 100 Stat. 846; Pub.L. 100-581, Title II, § 218, Nov. 1, 1988, 102 Stat. 2942, provided that:

"(a)(1) During the period of the appropriate withdrawal for selection pursuant to the Settlement Act [this chapter], any and all proceeds derived from contracts, leases, licenses, permits, rights-of-way, or easements, or from trespass occurring after the date of withdrawal of the lands for selection, pertaining to lands or resources of lands, including wildlife proceeds received between the date of withdrawal and the date of conveyance from harvests on lands conveyed pursuant to the Act, withdrawn for Native selection pursuant to the Settlement Act shall be deposited in an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting Corporation or individual entitled to receive benefits under such Act.

"(2) Such proceeds which were received, if any, subsequent to the date of withdrawal of the land for selection, but were not deposited in the escrow account shall be identified by the Secretary within two years of the date of conveyance or this Act [probably means Dec. 2, 1980], whichever is later, and shall be paid, together with interest payable on the proceeds from the date of receipt by the United States to the date of payment to the appropriate Corporation or individual to which the land was conveyed by the United States: *Provided*, That the interest on proceeds received prior to January 2, 1976, shall be calculated and paid at the rate of the earnings on Individual Indian Moneys in the custody of the Secretary of the Interior pursuant to sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9) and invested by him pursuant to the Act of June 24, 1938 (25 U.S.C. 162a), from the date of receipt to January 2, 1976. Effective January 2, 1976, the interest so calculated shall be added to the principal amount of such proceeds. The interest on this total amount and on proceeds received on or after January 2, 1976, shall be calculated and paid as though such proceeds and previously calculated interest had been deposited in the escrow account from January 2, 1976, or the date of receipt, whichever occurs later, to the date of payment to the affected Corporation.

"(3) Such proceeds which have been deposited in the escrow account shall be paid, together with interest accrued by the Secretary to the appropriate Corporation or individual upon conveyance of the particular withdrawn lands. In the event that a conveyance does not cover all of the land embraced within any contract, lease, license, permit, right-of-way, easement, or trespass, the Corporation or individual shall only be entitled to the proportionate amount of the proceeds, including interest accrued, derived from such contract, lease, license, permit, right-of-way, or easement, which results from multiplying the total of such proceeds, including interest accrued, by a fraction

in which the numerator is the acreage of such contract, lease, license, permit, right-of-way, or easement which is included in the conveyance and the denominator is the total acreage contained in such contract, lease, license, permit, right-of-way, or easement; in the case of trespass, the conveyee shall be entitled to the proportionate share of the proceeds, including a proportionate share of interest accrued, in relation to the damages occurring on the respective lands during the period the lands were withdrawn for selection.

"(4) Such proceeds which have been deposited in the escrow account pertaining to lands withdrawn but not selected pursuant to such Act [this chapter], or selected but not conveyed due to rejection or relinquishment of the selection, shall be paid, together with interest accrued, as would have been required by law were it not for the provisions of this Act [enacting sections 1625 to 1627 of this title, amending sections 1615, 1616, 1620 and 1621 of this title, and enacting provisions set out as notes under this section and sections 1604, 1605, 1611, 1618, and 1625 of this title].

"(5) Lands withdrawn under this subsection include all Federal lands identified under appendices A, B-1 and B-2 of the document referred to in section 12 of the Act of January 2, 1976 (Public Law 94-204) [set out as a note under section 1611 of this title] for Cook Inlet Region, Incorporated, and are deemed withdrawn as of the date established in subsection (a) of section 2 of the Act of January 2, 1976 [this subsection].

"(b) The Secretary is authorized to deposit in the Treasury of the United States the escrow account proceeds referred to in subsection (a) of this section, and the United States shall pay interest thereon semiannually from the date of deposit to the date of payment with simple interest at the rate determined by the Secretary of the Treasury to be the rate payable on short-term obligations of the United States prevailing at the time of payment: *Provided*, That the Secretary in his discretion may

withdraw such proceeds from the United States Treasury and reinvest such proceeds in the manner provided by the first section of the Act of June 24, 1938 (52 U.S.C. 1037) [section 162a of Title 25]: *Provided further*, That this section shall not be construed to create or terminate any trust relationship between the United States and any corporation or individual entitled to receive benefits under the Settlement Act [this chapter].

"(c) Any and all proceeds from public easements reserved pursuant to section 17(b)(3) of the Settlement Act [Section 1616(b)(3) of this title], from or after the date of enactment of this Act [Jan. 2, 1976], shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share.

"(d) To the extent that there is a conflict between the provisions of this section and any other Federal laws applicable to Alaska, the provisions of this section will govern. Any payment made to any corporation or any individual under authority of this section shall not be subject to any prior obligation under section 9(d) or 9(f) of the Settlement Act [section 1608(d) or section 1608 (f) of this title].

"(e) The Secretary shall calculate the amounts payable pursuant to this section and notify the affected Corporation of the results of his calculations. The affected Corporation shall have thirty days in which to appeal the Secretary's calculations after which the Secretary shall promptly make a final determination of the amounts payable. The Secretary shall certify such final determinations to the Secretary of the Treasury and each determination shall constitute a final judgment, award, or compromise settlement under section 1304 of title 31 of the United States Code. The Secretary of the Treasury is authorized and directed to pay such amounts to the appropriate Corporation out of funds in the Treasury: *Provided*, That if the lands from which the proceeds and

interest entitlement are derived have not been conveyed to the selecting Native Corporation at the time the Secretary makes his final determination, the Secretary of the Treasury is authorized and directed to pay such amount into the escrow account where it will earn interest and be disbursed in the same manner as other proceeds and interest."

* * *

§ 1615. Withdrawal and selection of public lands; funds in lieu of acreage

(a) Withdrawal of public lands; list of Native villages

All public lands in each township that encloses all or any part of a Native village listed below, and in each township that is contiguous to or corners on such township, except lands withdrawn or reserved for national defense purposes, are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended:

Angoon, Southeast.
Craig, Southeast.
Hoonah, Southeast.
Hydaburg, Southeast.
Kake, Southeast.
Kasaan, Southeast.
Klawock, Southeast.
Saxman, Southeast.
Yakutat, Southeast.

(b) Native land selections; Village Corporations for listed Native villages; acreage; proximity of

selections; conformity to Lands Survey System

During a period of three years from December 18, 1971, each Village Corporation for the villages listed in subsection (a) of this section shall select, in accordance with rules established by the Secretary, an area equal to 23,040 acres, which must include the township or townships in which all or part of the Native village is located, plus, to the extent necessary, withdrawn lands from the townships that are contiguous to or corner on such townships. All selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water, and shall conform as nearly as practicable to the United States Lands Survey System.

* * *

§ 1618. Reservations; revocation; excepted reserve; acquisition of title to surface and subsurface estates in reserve; election of Village Corporations

(a) Notwithstanding any other provision of law, and except where inconsistent with the provisions of this chapter, the various reserves set aside by legislation or by Executive or Secretarial Order for Native use or for administration of Native affairs, including those created under section 497 of Title 25, are hereby revoked subject to any valid existing rights of non-Natives. This section shall not apply to the Annette Island Reserve established by section 495 of Title 25 and no person enrolled in the Metlakatla Indian community of the Annette Island Reserve shall be eligible for benefits under this chapter.

(b) Notwithstanding any other provision of law or of this chapter, any Village Corporation or Corporations may elect within two years to acquire title to the surface and subsurface

estates in any reserve set aside for the use or benefit of its stockholders or members prior to December 18, 1971. If two or more villages are located on such reserve, the election must be made by all of the members or stockholders of the Village Corporations concerned. In such event, the Secretary shall convey the land to the Village Corporation or Corporations, subject to valid existing rights as provided in section 1613(g) of this title, and the Village Corporation shall not be eligible for any other land selections under this chapter or to any distribution of Regional Corporations funds pursuant to section 1606 of this title, and the enrolled residents of the Village Corporation shall not be eligible to receive Regional Corporation stock.

* * *

§ 1620. Taxation

(a) Fund revenues exemption; investment income taxable

Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions (even if the Regional Corporation or Village Corporation distributing the dividend has not segregated revenue received from the Alaska Native Fund from revenue received from other sources) or in any other manner. This exemption shall not apply to income from the investment of such revenues.

(b) Shares of stock exemption

The receipt of shares of stock in the Regional or Village Corporations by or on behalf of any Native shall not be subject

to any form of Federal, State or local taxation.

(c) Land or land interests exemption; basis for sale or other disposition, adjustment; basis for interest in mine, well, other, natural deposit, or block of timber, adjustment

The receipt of land or any interest therein pursuant to this chapter or of cash in order to equalize the values of properties exchanged pursuant to section 1621(f) of this title shall not be subject to any form of Federal, State, or local taxation. The basis for determining gain or loss from the sale or other disposition of such land or interest in land for purposes of any Federal, State, or local tax imposed on or measured by income shall be the fair value of such land or interest in land at the time of receipt, adjusted as provided in section 1016 of Title 26, as amended: *Provided, however*, That the basis of any such land or interest therein attributable to an interest in a mine, well, other natural deposit, or block of timber shall be not less than the fair value of such mine, well, natural deposit, or block of timber (or such interest therein as the Secretary shall convey) at the time of the first commercial development thereof, adjusted as provided in section 1016 of Title 26. For purposes of this subsection, the time of receipt of land or any interest therein shall be the time of the conveyance by the Secretary of such land or interest (whether by interim conveyance or patent).

(d) Real property interests; exemption period for conveyance of interests not developed or leased or interests used solely for exploration, interests taxable; derivative revenues taxable; exchanges; simultaneous exchanges

(1) Real property interests conveyed, pursuant to this

chapter, to a Native individual, Native Group, Village or Regional Corporation or corporation established pursuant to section 1613(h)(3) of this title which are not developed or leased to third parties or which are used solely for the purposes of exploration shall be exempt from State and local real property taxes for a period of twenty years from the vesting of title pursuant to the Alaska National Interest Lands Conservation Act or the date of issuance of an interim conveyance or patent, whichever is earlier, for those interests to such individual, group, or corporation: *Provided*, That municipal taxes, local real property taxes, or local assessments may be imposed upon any portion of such interest within the jurisdiction of any governmental unit under the laws of the State which is leased or developed for purposes other than exploration for so long as such portion is leased or being developed: *Provided further*, That easements, rights-of-way, leaseholds, and similar interests in such real property may be taxed in accordance with State or local law. All rents, royalties, profits, and other revenues or proceeds derived from such property interests shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(2) Any real property interest, not developed or leased to third parties, acquired by a Native individual, Native Group, Village or Regional Corporation, or corporation established pursuant to section 1613(h)(3) of this title in exchange for real property interests which are exempt from taxation pursuant to paragraph (1) of this subsection shall be deemed to be a property interest conveyed pursuant to this chapter and shall be exempt from taxation as if conveyed pursuant to this chapter, when such an exchange is made with the Federal Government, the State government, a municipal government, or another Native Corporation, or, if neither party to the exchange receives a cash value greater than 25 per centum of the value of the land

exchanged, a private party. In the event that a Native Corporation simultaneously exchanges two or more tracts of land having different periods of tax exemption pursuant to this subsection, the periods of tax exemption for the exchanged lands received by such Native Corporation shall be determined (A) by calculating the percentage that the acreage of each tract given up bears to the total acreage given up, and (B) by applying such percentages and the related periods of tax exemption to the acreage received in exchange.

(e) Public lands status of real property interests exempt from real estate taxes for purposes of Federal highway and education laws; Federal fire protection services for real property interests without cost

Real property interests conveyed pursuant to this chapter to a Native individual, Native group, corporation organized under section 1613(h)(3) of this title, or Village or Regional Corporation shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share of any highway project pursuant to Title 23, as amended and supplemented, for the purpose of the Johnson-O'Malley Act of April 16, 1934, as amended (25 U.S.C. 452), and for the purpose of Public Laws 815 and 874, 81st Congress (64 Stat. 967, 1100). So long as there are no substantial revenues from such lands they shall continue to receive wildland fire protection services from the United States at no cost.

(f) Stocks of Regional and Village Corporations exempt from estate taxes; period of exemption

Until January 1, 1992, stock of any Regional Corporation organized pursuant to section 1606 of this title, including the

right to receive distributions under subsection 1606(j) of this title, and stock of any Village Corporation organized pursuant to section 1607 of this title shall not be includable in the gross estate of a decedent under sections 2031 and 2033, or any successor provisions, of Title 26.

(g) Resource information or analysis; professional or technical services

In the case of any Native Corporation established pursuant to this chapter, income for purposes of any form of Federal, State, or local taxation shall not be deemed to include the value of--

(1) the receipt, acquisition, or use of any resource information or analysis (including the receipt of any right of access to such information or analysis) relating to lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this chapter;

(2) the promise or performance by any person or by any Federal, State, or local government agency of any professional or technical services relating to the resources of lands or interests therein conveyed, selected but not conveyed, or available for selection pursuant to this chapter, including, but not limited to, services in connection with exploration on such lands for oil, gas, or other minerals; and

(3) the expenditure of funds, incurring of costs, or the use of any equipment or supplies by any person or any Federal, State, or local government agency, or any promise, agreement, or other arrangement by such person or agency to expend funds or use any equipment or supplies for the purpose of creating, developing, or acquiring the resource information or analysis described in paragraph (1) or for the purpose of performing or otherwise furnishing the services described in paragraph (2): *Provided*, That this paragraph shall not apply to any funds paid

to a Native Corporation established pursuant to this chapter or to any subsidiary thereof.

This subsection shall be effective as of December 18, 1971, and, with respect to each Native Corporation, shall remain in full force and effect for a period of twenty years thereafter or until the Corporation has received conveyance of its full land entitlement, whichever first occurs. Except as set forth in this subsection and in subsection (d) of this section all rents, royalties, profits, and other revenues or proceeds derived from real property interests selected and conveyed pursuant to sections 1611 and 1613 of this title shall be taxable to the same extent as such revenues or proceeds are taxable when received by a non-Native individual or corporation.

(h) Date of incorporation as date of trade or business; ordinary and necessary expenses

(1) Notwithstanding any other provision of law, each Native Corporation established pursuant to this chapter shall be deemed to have become engaged in carrying on a trade or business as of the date it was incorporated for purposes of any form of Federal, State, or local taxation.

(2) All expenses heretofore or hereafter paid or incurred by a Native Corporation established pursuant to this chapter in connection with the selection or conveyance of lands pursuant to this chapter, or in assisting another Native Corporation within or for the same region in the selection or conveyance of lands under this chapter, shall be deemed to be or to have been ordinary and necessary expenses of such Corporation, paid or incurred in carrying on a trade or business for purposes of any form of Federal, State, or local taxation.

(i) Personal Holding Company Act exemption

No Corporation created pursuant to this chapter shall be considered to be a personal holding company within the meaning of section 542(a) of Title 26 prior to January 1, 1992.

(j) Shareholder homesites

A real property interest distributed by a Native Corporation to a shareholder of such Corporation pursuant to a program to provide homesites to its shareholders, shall be deemed conveyed and received pursuant to this chapter: *Provided*, That alienability of the Settlement Common Stock of the Corporation has not been terminated pursuant to section 1629c of this title: *Provided further*, That the land received is restricted by covenant for a period not less than ten years to single-family (including traditional extended family customs) residential occupancy, and by such other covenants and retained interests as the Native Corporation deems appropriate: *Provided further*, That the land conveyed does not exceed one and one-half acres: *Provided further*, That if the shareholder receiving the homesite subdivides such homesite, he or she shall pay all Federal, State, and local taxes that would have been incurred but for this subsection together with simple interest at 6 per centum per annum calculated from the date of receipt of the homesite, including taxes or assessments for the provision of road access and water and sewage facilities by the conveying corporation or the shareholder.

* * *

§ 1621. Miscellaneous provisions

* * *

(j) Interim conveyances and underselections

(1) Where lands to be conveyed to a Native, Native Corporation, or Native group pursuant to this chapter as amended and supplemented have not been surveyed, the same may be conveyed by the issuance of an "interim conveyance" to the party entitled to the lands. Subject to valid existing rights and such conditions and reservations authorized by law as are imposed, the force and effect of such an interim conveyance shall be to convey to and vest in the recipient exactly the same right, title, and interest in and to the lands as the recipient would have received had he been issued a patent by the United States. Upon survey of lands covered by an interim conveyance a patent thereto shall be issued to the recipient. The boundaries of the lands as defined and conveyed by the interim conveyance shall not be altered but may then be redescribed, if need be, in reference to the plat of survey. The Secretary shall make appropriate adjustments to insure that the recipient receives his full entitlement. Where the term "patent," or a derivative thereof, is used in this chapter unless the context precludes such construction, it shall be deemed to include "interim conveyance," and the conveyances of land to Natives and Native Corporations provided for this chapter shall be as fully effectuated by the issuance of interim conveyances as by the issuance of patents.

(2) Where lands selected and conveyed, or to be conveyed to a Village Corporation are insufficient to fulfill the Corporation's entitlement under section 1611(b), 1613(a), 1615(b), or 1615(d) of this title, the Secretary is authorized to

withdraw twice the amount of unfulfilled entitlement and provide the Village Corporation ninety days from receipt of notice from the Secretary to select from the lands withdrawn the land it desires to fulfill its entitlement. In making the withdrawal, the Secretary shall first withdraw public lands that were formerly withdrawn for selection by the concerned Village Corporation by or pursuant to section 1610(a)(1), 1610(a)(3), 1615(a), or 1615(d) of this title. Should such lands no longer be available, the Secretary may withdraw public lands that are vacant, unreserved, and unappropriated, except that the Secretary may withdraw public lands which had been previously withdrawn pursuant to section 1616(d) of this title. Any subsequent selection by the Village Corporation shall be in the manner provided in this chapter for such original selections.

* * *

(l) Land selection limitation; proximity to home rule or first class city and Ketchikan

Notwithstanding any provision of this chapter, no Village or Regional Corporation shall select lands which are within two miles from the boundary, as it exists on December 18, 1971, of any home rule or first class city (excluding boroughs) or which are within six miles from the boundary of Ketchikan.

§ 1622. Annual reports to Congress until 1984; submission in 1985 of report of status of Natives, summary of actions taken, and recommendations

The Secretary shall submit to the Congress annual reports on implementation of this chapter. Such reports shall be filed by the Secretary annually until 1984. At the beginning of the first

session of Congress in 1985 the Secretary shall submit, through the President, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under this chapter, together with such recommendations as may be appropriate.

* * *

§ 1624. Regulations; issuance; publication in Federal Register

The Secretary is authorized to issue and publish in the Federal Register, pursuant to subchapter II of chapter 5 of Title 5, such regulations as may be necessary to carry out the purposes of this chapter.

* * *

§ 1625. Securities laws exemption

(a) Laws; termination date of exempt status

A Native Corporation shall be exempt from the provisions, as amended, of the Investment Company Act of 1940 (54 Stat. 789), [15 U.S.C. 80a-1 et seq.], the Securities Act of 1933 (48 Stat. 74) [15 U.S.C. 77a et seq.], and the Securities Exchange Act of 1934 (48 Stat. 881) [15 U.S.C. 78a et seq.], until the earlier of the day after--

(1) the date on which the corporation issues shares of stock other than Settlement Common Stock in a transaction where--

(A) the transaction or the shares are not otherwise exempt from Federal securities laws; and

(B) the shares are issued to persons or entities other than--

(i) individuals who held shares in the corporation on

February 3, 1988;

(ii) Natives;

(iii) descendants of Natives;

(iv) individuals who have received shares of Settlement Common Stock by inheritance pursuant to section 1606(h)(2) of this title;

(v) Settlement Trusts; or

(vi) entities established for the sole benefit of Natives or descendants of Natives; or

(2) the date on which alienability restrictions are terminated; or

(3) the date on which the corporation files a registration statement with the Securities and Exchange Commission pursuant to either the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(b) Status of Native Corporations after termination date

No provision of this section shall be construed to require or imply that a Native Corporation shall, or shall not, be subject to provisions of the Acts listed in subsection (a) of this section after any of the dates described in subsection (a) of this section.

(c) Annual report to shareholders; shareholders of record

(1) A Native Corporation that, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] shall annually prepare and transmit to its shareholders a report that contains substantially all the information required to be included in an annual report to shareholders by a corporation subject to that Act.

(2) For purposes of determining the applicability of the

registration requirements of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] on or after the date described in subsection (a) of this section, holders of Settlement Common Stock shall be excluded from the calculation of the number of shareholders of record pursuant to section 12(g) of that Act [15 U.S.C. 78l (g)].

(d) Wholly owned subsidiaries; Settlement Trusts; voluntary registration as Investment Company

(1) Notwithstanding any other provision of law, prior to January 1, 2001, the provisions of the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] shall not apply to any Native Corporation or any subsidiary of such corporation if such subsidiary is wholly owned (as that term is defined in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] by the corporation and the corporation owns at least 95 per centum of the equity of the subsidiary.

(2) The Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] shall not apply to any Settlement Trust.

(3) If, but for this section, a Native Corporation would qualify as an Investment Company under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], it shall be entitled to voluntarily register pursuant to such Act and any such corporation which so registered shall thereafter comply with the provisions of such Act.

§ 1626. Relation to other programs

(a) Continuing availability of otherwise available governmental programs

The payments and grants authorized under this chapter constitute compensation for the extinguishment of claims to

land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

(b) Food stamp program

Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964 (78 Stat. 703), as amended [7 U.S.C. 2011 et seq.], in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under this chapter shall be disregarded.

(c) Eligibility for need-based Federal programs

In determining the eligibility of a household, an individual Native, or a descendant of a Native (as defined in section 1602(r) of this title) to--

(1) participate in the Food Stamp Program,

(2) receive aid, assistance, or benefits, based on need, under the Social Security Act [42 U.S.C. 301 et seq.], or

(3) receive financial assistance or benefits, based on need, under any other Federal program or federally-assisted program,

none of the following received from a Native Corporation, shall be considered or taken into account as an asset or resource:

(A) cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;

(B) stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(C) a partnership interest;

(D) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(E) an interest in a settlement trust.

(d) Federal Indian programs

Notwithstanding any other provision of law, Alaska Natives shall remain eligible for all Federal Indian programs on the same basis as other Native Americans.

(e) Minority status and economically disadvantaged status

(1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives, represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors.

(2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be entities owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the shares of stock or other units of ownership interest in any such entity held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both--

(A) the total equity of the subsidiary corporation, joint venture, or partnership; and

(B) the total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers.

(3) No provision of this subsection shall--

(A) preclude a Federal agency or instrumentality from applying standards for determining minority ownership (or control) less restrictive than those described in paragraphs (1) and (2), or

(B) supersede any such less restrictive standards in existence on February 3, 1988.

* * *

(g) Civil Rights Act of 1964

For the purposes of implementation of the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.], a Native Corporation and corporations, partnerships, joint ventures, trusts, or affiliates in which the Native Corporation owns not less than 25 per centum of the equity shall be within the class of entities excluded from the definition of "employer" by section 701(b)(1) of Public Law 88-352 (78 Stat. 253) [42 U.S.C. 2000e(b)(1)], as amended, or successor statutes.

§ 1627. Merger of Native corporations

(a) Applicability of State law

Notwithstanding any provision of this chapter, any corporation created pursuant to section 1606(d), 1607(a), 1613(h)(2), or 1613(h)(3) of this title within any of the twelve regions of Alaska, as established by section 1606(a) of this title, may, at any time, merge or consolidate, pursuant to the applicable provisions of the laws of the State of Alaska, with

any other of such corporation or corporations created within or for the same region. Any corporations resulting from mergers or consolidations further may merge or consolidate with other such merged or consolidated corporations within the same region or with other of the corporations created in said region pursuant to section 1606(d), 1607(a), 1613(h)(2), or 1613(h)(3) of this title.

(b) Terms and conditions of merger; rights of dissenting shareholders; rights and liabilities of successor corporation

Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, including, where appropriate, terms providing for the issuance of additional shares of Regional Corporation stock to persons already owning such stock, and may take place pursuant to votes of shareholders held either before or after January 2, 1976: *Provided*, That the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this chapter effected while the Settlement Common Stock of all corporations subject to merger or consolidation remains subject to alienability restrictions. Upon the effectiveness of any such mergers or consolidations the corporations resulting therefrom and the shareholders thereof shall succeed and be entitled to all the rights, privileges, and benefits of this chapter, including but not limited to the receipt of lands and moneys and exemptions from various forms of Federal, State, and local taxation, and shall be subject to all the restrictions and obligations of this chapter as are applicable to the corporations and shareholders which and who participated in said mergers or consolidations or as would have been applicable if the mergers or consolidations and transfers

of rights and titles thereto had not taken place: *Provided*, That, where a Village Corporation organized pursuant to section 1618(b) of this title merges or consolidates with the Regional Corporation of the region in which such village is located or with another Village Corporation of that region, no provision of such merger or consolidation shall be construed as increasing or otherwise changing regional enrollments for purposes of distribution of the Alaska Native Fund; land selection eligibility; or revenue sharing pursuant to sections 1605(c), 1606(m), 1611(b), 1613(h)(8), and 1606(i) of this title.

(c) Alteration or elimination of dividend rights

Notwithstanding the provisions of section 1606(j) or (m) of this title, in any merger or consolidation in which the class of stockholders of a Regional Corporation who are not residents of any of the villages in the region are entitled under Alaska law to vote as a class, the terms of the merger or consolidation may provide for the alteration or elimination of the right of said class to receive dividends pursuant to said section 1606(j) or (m) of this title. In the event that such dividend right is not expressly altered or eliminated by the terms of the merger or consolidation, such class of stockholders shall continue to receive such dividends pursuant to section 1606(j) or (m) of this title as would have been applicable if the merger or consolidation had not taken place and all Village Corporations within the affected region continued to exist separately.

(d) Approval of merger or consolidation by shareholders

Notwithstanding any other provision of this section or of any other law, no corporation referred to in this section may merger or consolidate with any other such corporations unless that corporation's shareholders have approved such merger or

consolidation.

(e) Conveyance of right to withhold consent to mineral exploration, development, etc., as part of merger or consolidation

The plan of merger or consolidation shall provide that the right of any affected Village Corporation pursuant to section 1613(f) of this title to withhold consent to mineral exploration, development, or removal within the boundaries of the Native village shall be conveyed, as part of the merger or consolidation, to a separate entity composed of the Native residents of such Native village.

* * *

§ 1629b. Procedures for considering amendments and resolutions

(a) Coverage

Notwithstanding any provision of the articles of incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section--

(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 1606 of this title, subsection (d)(1)(B) of this section, or section 1629c of this title;

(2) a resolution authorized by section 1629d(a)(2) of this title;

(3) a resolution to establish a Settlement Trust; or

(4) a resolution to convey all or substantially all of the assets of a Native Corporation to a Settlement Trust pursuant to

section 1629e(a)(1) of this title;
shall be considered in accordance with the provisions of this section.

(b) Basic procedure

(1) An amendment or resolution described in subsection (a) of this section may be approved by the board of directors of a Native Corporation in accordance with its bylaws. If the board approves the amendment or resolution, it shall direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such special meeting). One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) of this section and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the shareholders, by first-class mail or hand-delivered to each shareholder of record entitled to vote at his or her address as it appears in the records of the Native Corporation. The corporation may also communicate with its shareholders at any time and in any manner authorized by the laws of the State.

(B) The board of directors may, but shall not be required to, appraise or otherwise determine the value of--

(i) land conveyed to the corporation pursuant to section 1613(h)(1) of this title or any other land used as a cemetery;

(ii) the surface estate of land that is both--

(I) exempt from real estate taxation pursuant to section

1636(d)(1)(A) of this title; and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of Title 16); or

(iii) land or interest in land which the board of directors believes to be only of speculative value;

in connection with any communication made to the shareholders pursuant to this subsection.

(C) If the board of directors determines, for quorum purposes or otherwise, that a previously-noticed meeting must be postponed or adjourned, it may, by giving notice to the shareholders, set a new date for such meeting not more than forty-five days later than the original date without sending the shareholders a new written notice (or a new summary of changes to be effected). If the new date is more than forty-five days later than the original date, however, a new written notice (and a new summary of changes to be effected if such a summary was originally sent pursuant to subparagraph (A)), shall be sent or delivered to shareholders not less than thirty days nor more than forty-five days prior to the new date.

(c) Shareholder petitions

(1)(A) With respect to an amendment authorized by section 1606(g)(1)(B) of this title or section 1629c(b) of this title or an amendment authorizing the issuance of stock subject to the restrictions provided by section 1606(g)(2)(B)(iii) of this title, the holders of shares representing at least 25 per centum of the total voting power of a Native Corporation may petition the board of directors to submit such amendment to a vote of the shareholders in accordance with the provisions of this section.

(B) The requirements of the laws of the State relating to the solicitation of proxies shall govern solicitation of signatures for a petition described in subparagraph (A) except that the requirements of Federal law shall govern the solicitation of

signatures for a petition that is to be submitted to a Native Corporation which at the time of such submission has issued a class of equity securities registered pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]. If a petition meets the applicable solicitation requirements and--

(i) the board agrees with such petition, the board shall submit the amendment and either the proponents' statement or its own statement in support of the amendment to the shareholders for a vote, or

(ii) the board disagrees with the petition for any reason, the board shall submit the amendment and the proponents' statement to the shareholders for a vote and may, at its discretion, submit an opposing statement or an alternative amendment.

(2) Paragraph (1) shall not apply to a Native Corporation that on or before the date one year after February 3, 1988 elects application of section 1629c(d) of this title in lieu of section 1629c(b) of this title. Until December 18, 1991, paragraph (1) shall not apply to a Native Corporation that elects application of section 1629c(c) of this title in lieu of section 1629c(b) of this title. Insofar as they are not inconsistent with this section, the laws of the State shall govern any shareholder right of petition for Native Corporations.

(d) Voting standards

(1) An amendment or resolution described in subsection (a) of this section shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing--

(A) a majority of the total voting power of the corporation, or

(B) a level of the total voting power of the corporation greater than a majority (but not greater than two-thirds of the

total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

(2) A Native Corporation in amending its articles of incorporation pursuant to section 1606(g)(2) of this title to authorize the issuance of a new class or series of stock may provide that a majority (or more than a majority) of the shares of such class or series must vote in favor of an amendment or resolution described in subsection (a) of this section (other than an amendment authorized by section 1629c of this title) in order for such amendment or resolution to be approved.

(e) Voting power

For the purposes of this section, the determination of total voting power of a Native Corporation shall include all outstanding shares of stock that carry voting rights except shares that are not permitted to vote on the amendment or resolution in question because of restrictions in the articles of incorporation of the corporation.

§ 1629c. Duration of alienability restrictions

(a) General rule

Alienability restrictions shall continue until terminated in accordance with the procedures established by this section. No such termination shall take effect until after July 16, 1993: *Provided, however*, That this prohibition shall not apply to a Native Corporation whose board of directors approves, no later than March 1, 1992, a resolution (certified by the corporate secretary of such corporation) electing to decline the application of such prohibition.

(b) Opt-out procedure

(1)(A) A Native Corporation may amend its articles of incorporation to terminate alienability restrictions in accordance with this subsection. Only one amendment to terminate alienability restrictions shall be considered and voted on prior to December 18, 1991. Rejection of the amendment shall not preclude consideration prior to December 18, 1991, of subsequent amendments to terminate alienability restrictions.

(B) If an amendment to terminate alienability restrictions is considered, voted on, and rejected prior to December 18, 1991, then subsequent amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on--

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not earlier than five years after the rejection of the most recently rejected amendment to terminate restrictions; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not earlier than two years after the rejection of the most recently rejected amendment to terminate restrictions.

(C) If no amendment to terminate alienability restrictions is considered and voted on prior to December 18, 1991, then amendments to terminate alienability restrictions after December 18, 1991, shall be considered and voted on--

(i) in the case of an amendment submitted by the board of directors of the corporation on its own motion, not more than once every five years; or

(ii) in the case of an amendment submitted by the board of directors of the corporation pursuant to a shareholder petition, not more than once every two years.

(2) An amendment authorized by paragraph (1) shall specify the time of termination, either by establishing a date certain or

by describing the specific event upon which alienability restrictions shall terminate.

(3) Dissenters rights may be granted by the corporation in connection with the rejection of an amendment to terminate alienability restrictions in accordance with section 1629d of this title. Once dissenters rights have been so granted, they shall not be granted again in connection with subsequent amendments to terminate alienability restrictions.

* * *

§ 1629d. Dissenters rights

(a) Coverage

(1) Notwithstanding the laws of the State, if the shareholders of a Native Corporation--

(A) fail to approve an amendment authorized by section 1629c(b) of this title to terminate alienability restrictions, a shareholder who voted for the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock; or

(B) approve an amendment authorized by section 1629c(d) of this title to continue alienability restrictions without issuing alienable common stock pursuant to section 1629c(d)(6) of this title, a shareholder who voted against the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock.

(2)(A) A demand for payment made pursuant to paragraph (1)(A) shall be honored only if at the same time as the vote giving rise to the demand, the shareholders of the corporation approved a resolution providing for the purchase of Settlement Common Stock from dissenting shareholders.

(B) A demand for payment made pursuant to paragraph

(1)(B) shall be honored.

(b) Relationship to State procedure

(1) Except as otherwise provided in this section, the laws of the State governing the right of a dissenting shareholder to demand and receive payment for his or her shares shall apply to demands for payment honored pursuant to subsection (a)(2) of this section.

(2) The board of directors of a Native Corporation may approve a resolution to provide a dissenting shareholder periods of time longer than those provided under the laws of the State to take actions required to demand and receive payment for his or her shares.

(c) Valuation of stock

(1) Prior to a vote described in subsection (a)(1) of this section, the board of directors of a Native Corporation may approve a resolution to provide that one or more of the following conditions will apply in the event a demand for payment is honored pursuant to subsection (a)(2) of this section--

(A) the Settlement Common Stock shall be valued as restricted stock; and

(B) the value of--

(i) any land conveyed to the corporation pursuant to section 1613(h)(1) of this title or any other land used as a cemetery; and

(ii) the surface estate of any land that is both--

(I) exempt from real estate taxation pursuant to section 1636(d)(1)(A) of this title, and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of Title 16); or

(iii) any land or interest in land which the board of directors believes to be only of speculative value;
shall be excluded by the shareholder making the demand for payment, the corporation purchasing the Settlement Common Stock of the shareholder, and any court determining the fair value of the shares of Settlement Common Stock to be purchased.

(2) No person shall have a claim against a Native Corporation or its board of directors based upon the failure of the board to approve a resolution authorized by this subsection.

(d) Form of payment

(1) Prior to a vote described in subsection (a)(1) of this section, the board of directors of a Native Corporation may approve a resolution to provide that in the event a demand for payment is honored pursuant to subsection (a)(2) of this section payments to each dissenting shareholder shall be made by the corporation through the issuance of a negotiable note in the principal amount of the payment due, which shall be secured by--

(A) a payment bond issued by an insurance company or financial institution;

(B) the deposit in escrow of securities or property having a fair market value equal to at least 125 per centum of the face value of the note; or

(C) a lien upon real property interests of the corporation valued at 125 percent or more of the face amount of the note, except that no such lien shall be applicable to--

(i) land conveyed to the corporation pursuant to section 1613(h)(1) of this title, or any other land used as a cemetery;

(ii) the percentage interest in the corporation's timber resources and subsurface estate that exceeds its percentage

interest in revenues from such property under section 1606(i) of this title; or

(iii) the surface estate of land that is both--

(I) exempt from real estate taxation pursuant to section 1636(d)(1)(A) of this title; and

(II) used by the shareholders of the corporation for subsistence uses (as defined in section 3113 of Title 16),

unless the Board of Directors of the corporation acts so as to make such lien applicable to such surface estate.

(2) A note issued pursuant to paragraph (1) shall provide that--

(A) interest shall be paid semi-annually, beginning as of the date on which the vote described in subsection (a)(1) of this section occurred, at the rate applicable on such date to obligations of the United States having a maturity date of one year, and

(B) the principal amount and accrued interest on such note shall be payable to the holder at a time specified by the corporation but in no event later than the date that is five years after the date of the vote described in subsection (a)(1) of this section.

(e) Dividend adjustment

(1) The cash payment made pursuant to subsection (a) of this section or the principal amount of a note issued pursuant to subsection (d) of this section to a dissenting shareholder shall be reduced by the amount of dividends paid to such shareholder with respect to his or her Settlement Common Stock after the date of the vote described in subsection (a)(1) of this section.

(2) Upon receipt of a cash payment pursuant to subsection (a) of this section or a note pursuant to subsection (d) of this

section, a dissenting shareholder shall no longer have an interest in the shares of Settlement Common Stock or in the Native Corporation.

§ 1629e. Settlement Trust option

(a) Conveyance of corporate assets

(1)(A) A Native Corporation may convey assets (including stock or beneficial interests therein) to a Settlement Trust in accordance with the laws of the State (except to the extent that such laws are inconsistent with this section and section 1629b of this title).

(B) The approval of the shareholders of the corporation in the form of a resolution shall be required to convey all or substantially all of the assets of the corporation to a Settlement Trust. A conveyance in violation of this clause shall be void ab initio and shall not be given effect by any court.

(2) No subsurface estate in land shall be conveyed to a Settlement Trust. A conveyance of title to, or any other interest in, subsurface estate in violation of this subparagraph shall be void ab initio and shall not be given effect by any court.

(3) Conveyances made pursuant to this subsection--

(A) shall be subject to applicable laws respecting fraudulent conveyance and creditors rights; and

(B) shall give rise to dissenters rights to the extent provided under the laws of the State only if the rights of beneficiaries in the Settlement Trust receiving a conveyance are inalienable.

(4) The provisions of this subsection shall not prohibit a Native Corporation from engaging in any conveyance, reorganization, or transaction not otherwise prohibited under the laws of the State or the United States.

(b) Authority and limitations of a Settlement Trust

(1) The purpose of a Settlement Trust shall be to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives. A Settlement Trust shall not--

(A) operate as a business;

(B) alienate land or any interest in land received from the settlor Native Corporation (except if the recipient of the land is the settlor corporation); or

(C) discriminate in favor of a group of individuals composed only or principally of employees, officers, or directors of the settlor Native Corporation.

An alienation of land or an interest in land in violation of this paragraph shall be void ab initio and shall not be given effect by any court.

(2) A Native Corporation that has established a Settlement Trust shall have exclusive authority to--

(A) appoint the trustees of the trust, and

(B) remove the trustees of the trust for cause.

Only a natural person shall be appointed a trustee of a Settlement Trust. An appointment or removal of a trustee in violation of this paragraph shall be void ab initio and shall not be given effect by any court.

(3) A Native Corporation that has established a Settlement Trust may expand the class of beneficiaries to include holders of Settlement Common Stock issued after the establishment of the trust without compensation to the original beneficiaries.

(4) A Settlement Trust shall not be held to violate any laws against perpetuities.

(c) Savings

(1) The provisions of this chapter shall continue to apply to any land or interest in land received from the Federal Government pursuant to this chapter and later conveyed to a Settlement Trust as if the land or interest in land were still held by the Native Corporation that conveyed the land or interest in land.

(2) No timber resources subject to section 1606(i) of this title conveyed to a Settlement Trust shall be sold, exchanged, or otherwise conveyed except as necessary to--

(A) dispose of diseased or dying timber or to prevent the spread of disease or insect infestation;

(B) prevent or suppress fire; or

(C) ensure public safety.

The revenue, if any, from such timber harvests shall be subject to section 1606(i) of this title as if such conveyance had not occurred.

(3) The conveyance of assets (including stock or beneficial interests) pursuant to subsection (a) of this section shall not affect the applicability or enforcement (including specific performance) of a valid contract, judgment, lien, or other obligation (including an obligation arising under section 1606(i) of this title) to which such assets, stock, or beneficial interests were subject immediately prior to such conveyance.

(4) A claim based upon paragraph (1), (2), or (3) shall be enforceable against the transferee Settlement Trust holding the land, interest in land, or other assets (including stock or beneficial interests) in question to the same extent as such claim would have been enforceable against the transferor Native Corporation, and valid obligations arising under section 1606(i) of this title as well as claims with respect to a

conveyance in violation of a valid contract, judgment, lien, or other obligation shall also be enforceable against the transferor corporation.

(5) Except as provided in paragraphs (1), (2), (3), and (4), once a Native Corporation has made, pursuant to subsection (a) of this section, a conveyance to a Settlement Trust that does not--

(A) render it--

(i) unable to satisfy claims based upon paragraph (1), (2), or (3); or

(ii) insolvent; or

(B) occur when the Native Corporation is insolvent;

the assets so conveyed to the Settlement Trust shall not be subject to attachment, distraint, or sale on execution of judgment or other process or order of any court, except with respect to the lawful debts or obligations of the Settlement Trust.

(6) No transferee Settlement Trust shall make a distribution or conveyance of assets (including cash, stock, or beneficial interests) that would render it unable to satisfy a claim made pursuant to paragraph (1), (2), or (3). A distribution or conveyance made in violation of this paragraph shall be void ab initio and shall not be given effect by any court.

(7) Except where otherwise expressly provided, no provision of this section shall be construed to require shareholder approval of an action where shareholder approval would not be required under the laws of the State.

* * *

§ 1633. Administrative provisions

(a) Limitations concerning easements

With respect to lands conveyed to Native Corporations or Native Groups the Secretary shall reserve only those easements which are described in section 17(b)(1) of the Alaska Native Claims Settlement Act [43 U.S.C. 1616(b)(1)] and shall be guided by the following principles:

(1) all easements should be designed so as to minimize their impact on Native life styles, and on subsistence uses; and

(2) each easement should be specifically located and described and should include only such areas as are necessary for the purpose or purposes for which the easement is reserved.

(b) Acquisition of future easements

Whenever, after a conveyance has been made by this Act or under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], the Secretary determines that an easement not reserved at the time of conveyance or by operation of subsection (a) of this section is required for any purpose specified in section 17(b)(1) of the Alaska Native Claims Settlement Act [43 U.S.C. 1616(b)(1)], he is authorized to acquire such easement by purchase or otherwise. The acquisition of such an easement shall be deemed a public purpose for which the Secretary may exercise his exchange authority pursuant to section 22(f) of the Alaska Native Claims Settlement Act [43 U.S.C. 1621(f)].

* * *

§ 1636. Alaska land bank

(a) Establishment; agreements

(1) In order to enhance the quantity and quality of Alaska's renewable resources and to facilitate the coordinated management and protection of Federal, State, and Native and other private lands, there is hereby established the Alaska Land Bank Program. Any private landowner is authorized as provided in this section to enter into a written agreement with the Secretary if his lands adjoin, or his use of such lands would directly affect, Federal land, Federal and State land, or State land if the State is not participating in the program. Any private landowner described in subsection (d)(1) of this section whose lands do not adjoin, or whose use of such lands would not directly affect either Federal or State lands also is entitled to enter into an agreement with the Secretary. Any private landowner whose lands adjoin, or whose use of such lands would directly affect, only State, or State and private lands, is authorized as provided in this section to enter into an agreement with the State of Alaska if the State is participating in the program. If the Secretary is the contracting party with the private landowner, he shall afford the State an opportunity to participate in negotiations and become a party to the agreement. An agreement may include all or part of the lands of any private landowner: *Provided*, That no lands shall be included in the agreement unless the Secretary, or the State, determines that the purposes of the program will be promoted by their inclusion.

(2) If a private landowner consents to the inclusion in an agreement of the stipulations provided in subsections (b)(1), (b)(2), (b)(4), (b)(5), and (b)(7) of this section, and if such owner does not insist on any additional terms which are

unacceptable to the Secretary or the State, as appropriate, the owner shall be entitled to enter into an agreement pursuant to this section. If an agreement is not executed within one hundred and twenty days of the date on which a private landowner communicates in writing his consent to the stipulations referred to in the preceding sentence, the appropriate Secretary or State agency head shall execute an agreement. Upon such execution, the private owner shall receive the benefits provided in subsection (c) hereof.

(3) No agreement under this section shall be construed as affecting any land, or any right or interest in land, of any owner not a party to such agreement.

(b) Terms of agreement

Each agreement referred to in subsection (a) of this section shall have an initial term of ten years, with provisions, if any, for renewal for additional periods of five years. Such agreement shall contain the following terms:

(1) The landowner shall not alienate, transfer, assign, mortgage, or pledge the lands subject to the agreement except as provided in section 14(c) of the Alaska Native Claims Settlement Act [43 U.S.C. 1613(c)], or permit development or improvement on such lands except as provided in the agreement. For the purposes of this section only, each agreement entered into with a landowner described in subsection (d)(1) of this section shall constitute a restriction against alienation imposed by the United States upon the lands subject to the agreement.

(2) Lands subject to the agreement shall be managed by the owner in a manner compatible with the management plan, if any, for the adjoining Federal or State lands, and with the requirements of this subsection. If lands subject to the agreement do not adjoin either Federal or State lands, they shall

be managed in a manner compatible with the management plan, if any, of Federal or State lands which would be directly affected by the use of such private lands. If no such plan has been adopted, or if the use of such private lands would not directly affect either Federal or State lands, the owner shall manage such lands in accordance with the provisions in paragraph (1) of this subsection. Except as provided in (3) of this subsection, nothing in this section or the management plan of any Federal or State agency shall be construed to require a private landowner to grant public access on or across his lands.

(3) If the surface landowner so consents, such lands may be made available for local or other recreational use: *Provided*, That the refusal of a private landowner to permit the uses referred to in this subsection shall not be grounds for the refusal of the Secretary or the State to enter into an agreement with the landowner under this section.

(4) Appropriate Federal and/or State agency heads shall have reasonable access to such privately owned land for purposes relating to the administration of the adjoining Federal or State lands, and to carry out their obligations under the agreement.

(5) Reasonable access to such land by officers of the State shall be permitted for purposes of conserving fish and wildlife.

(6) Those services or other consideration which the appropriate Secretary or the State shall provide to the owner pursuant to subsection (c)(1) of this section shall be set forth.

(7) All or part of the lands subject to the agreement may be withdrawn from the Alaska land bank program not earlier than ninety days after the landowner--

(A) submits written notice thereof to the other parties which are signatory to the agreement; and

(B) pays all Federal, State and local property taxes and assessments which, during the particular term then in effect, would have been incurred except for the agreement, together with interest on such taxes and assessments in an amount to be

determined at the highest rate of interest charged with respect to delinquent property taxes by the Federal, State or local taxing authority, if any.

(8) The agreement may contain such additional terms, which are consistent with the provisions of this section, as seem desirable to the parties entering into the agreement: *Provided*, That the refusal of the landowner to agree to any additional terms shall not be grounds for the refusal of the Secretary or the State to enter into an agreement with the landowner under this section.

(c) Benefits to private landowners

(1) In addition to any requirement of applicable law, the appropriate Secretary is authorized to provide technical and other assistance with respect to fire control, trespass control, resource and land use planning, and the protection, maintenance, and enhancement of any special values of the land subject to the agreement, all with or without reimbursement as agreed upon by the parties, so long as the landowner is in compliance with the agreement.

(2) The provision of section 21(e) of the Alaska Native Claims Settlement Act [43 U.S.C. 1620(e)] shall apply to all lands which are subject to an agreement made pursuant to this section so long as the parties to the agreement are in compliance therewith.

(d) Automatic protections for lands conveyed pursuant to the Alaska Native Claims Settlement Act

(1)(A) Notwithstanding any other provision of law or doctrine of equity, all land and interests in land in Alaska conveyed by the Federal Government pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] to a

Native individual or Native Corporation or subsequently reconveyed by a Native Corporation pursuant to section 39 of that Act [43 U.S.C. 1629e] to a Settlement Trust shall be exempt, so long as such land and interests are not developed or leased or sold to third parties from--

(i) adverse possession and similar claims based upon estoppel;

(ii) real property taxes by any governmental entity;

(iii) judgments resulting from a claim based upon or arising under--

(I) Title 11 or any successor statute,

(II) other insolvency or moratorium laws, or

(III) other laws generally affecting creditors' rights;

(iv) judgments in any action at law or in equity to recover sums owed or penalties incurred by a Native Corporation or Settlement Trust or any employee, officer, director, or shareholder of such corporation or trust, unless this exemption is contractually waived prior to the commencement of such action; and

(v) involuntary distributions or conveyances related to the involuntary dissolution of a Native Corporation or Settlement Trust.

(B) Except as otherwise provided specifically provided, the exemptions described in subparagraph (A) shall apply to any claim or judgment existing on or arising after February 3, 1988.

(2) Definitions

(A) For purposes of this subsection, the term--

(i) "Developed" means a purposeful modification of land, or an interest in land, from its original state that effectuates a condition of gainful and productive present use without further substantial modification. Surveying, construction of roads, providing utilities, or other similar actions, which are normally

considered to be component parts of the development process but do not create the condition described in the preceding sentence, shall not constitute a developed state within the meaning of this clause. In order to terminate the exemptions listed in paragraph (1), land, or an interest in land, must be developed for purposes other than exploration, and the exemptions will be terminated only with respect to the smallest practicable tract actually used in the developed state;

(ii) "Exploration" means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources; and

(iii) "Leased" means subjected to a grant of primary possession entered into for a gainful purpose with a determinable fee remaining in the hands of the grantor. With respect to a lease that conveys rights of exploration and development, the exemptions listed in paragraph (1) shall continue with respect to that portion of the leased tract that is used solely for the purposes of exploration.

(B) For purposes of this subsection--

(i) land shall not be considered developed solely as a result of--

(I) the construction, installation, or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist, or otherwise further subsistence uses or other customary or traditional uses of such land, or

(II) the receipt of fees related to hunting, fishing, and guiding activities conducted on such land;

(ii) land upon which timber resources are being harvested shall be considered developed only during the period of such harvest and only to the extent that such land is integrally related to the timber harvesting operation; and

(iii) land subdivided by a State or local platting authority on the basis of a subdivision plat submitted by the holder of the land or its agent, shall be considered developed on the date an

approved subdivision plat is recorded by such holder or agent unless the subdivided property is a remainder parcel.

(3) Action by a trustee

(A) Except as provided in this paragraph and in section 14(c)(3) of the Alaska Native Claims Settlement Act [43 U.S.C. 1613(c)(3)] no trustee, receiver, or custodian vested pursuant to applicable Federal or State law with a right, title, or interest of a Native individual or Native Corporation shall--

(i) assign or lease to a third party,

(ii) commence development or use of, or

(iii) convey to a third party,

any right, title, or interest in any land, or interests in land, subject to the exemptions described in paragraph (1).

(B) The prohibitions of subparagraph (A) shall not apply--

(i) when the actions of such trustee, receiver, or custodian are for purposes of exploration or pursuant to a judgment in law or in equity (or arbitration award) arising out of any claim made pursuant to section 7(i) [43 U.S.C. 1606(i)] or section 14(c) [43 U.S.C. 1613(c)] of the Alaska Native Claims Settlement Act; or

(ii) to any land, or interest in land, which has been--

(I) developed or leased prior to the vesting of the trustee, receiver, or custodian with the right, title, or interest of the Native Corporation; or

(II) expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement.

(4) Exclusions, reattachment of exemptions

(A) The exemptions listed in paragraph (1) shall not apply to

any land, or interest in land, which is--

(i) developed or leased or sold to a third party;

(ii) held by a Native Corporation in which neither--

(I) the Settlement Common Stock of the corporation,

(II) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock, nor

(III) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives,

represents a majority of either the total equity of the corporation or the total voting power of the corporation for the purposes of electing directors; or

(iii) held by a Settlement Trust with respect to which any of the conditions set forth in section 39 of the Alaska Native Claims Settlement Act [43 U.S.C. 1629e] have been violated.

(B) The exemptions described in clauses (iii), (iv), and (v) of paragraph (1)(A) shall not apply to any land, or interest in land--

(i) to the extent that such land or interest is expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement, and

(ii) to the extent necessary to enforce a judgment in any action at law or in equity (or any arbitration award) arising out of any claim made pursuant to section 7(i) [43 U.S.C. 1606(i)] or section 14(c) [43 U.S.C. 1613(c)] of the Alaska Native Claims Settlement Act.

(C) If the exemptions listed in paragraph (1) are terminated with respect to land, or an interest in land, as a result of development (or a lease to a third party), and such land, or interest in land, subsequently reverts to an undeveloped state (or the third-party lease is terminated), then the exemptions shall again apply to such land, or interest in land, in accordance

with the provisions of this subsection.

* * *

§ 1641. Conveyances to Village Corporations

(a) Optional procedure

The provisions of this section shall be applicable only to the conveyance of Federal lands described herein to a Native Corporation which within one hundred and eighty days after December 2, 1980, or the date of eligibility determination, whichever is later, files a document with the Secretary setting forth its election to receive conveyance pursuant to this section.

(b) "Core" townships, etc.

(1)(A) Except to the extent that conveyance of a surface estate would be inconsistent with section 12(a), 14(a), 14(b), or 22(l) of the Alaska Native Claims Settlement Act [43 U.S.C. 1611(a), 1613(a), 1613(b), or 1621(l)], subject to valid existing rights and section 1633(a) of this title, there is hereby conveyed to and vested in each Village Corporation for a Native Village which is determined by the Secretary to be eligible for land under section 11 or 16 of the Alaska Native Claims Settlement Act [43 U.S.C. 1610 or 1615], and which did not elect to acquire a former reserve under section 19(b) of such Act [43 U.S.C. 1618(b)], all of the right, title, and interest of the United States in and to the surface estate in the public lands, as defined in such Act [43 U.S.C. 1601 et seq.], in the township or townships withdrawn pursuant to section 11(a)(1) or 16(a) of such Act [43 U.S.C. 1610 (a)(1) or 1615(a)] in which all or any part of such Village is located. As used in this paragraph the term "Native Village" has the same meaning such term has in

section 3(c) of the Alaska Native Claims Settlement Act [43 U.S.C. 1602(c)].

* * *

(2) Except to the extent that conveyance of a surface estate would be inconsistent with section 12(a), 14(a), or 22(l) of the Alaska Native Claims Settlement Act [43 U.S.C. 1611(a), 1613(a), or 1621(l)], subject to valid existing rights and section 1633(a) of this title, there is hereby conveyed to and vested in each Village Corporation for a Native Village which is determined by the Secretary to be eligible for land under section 11 of such Act [43 U.S.C. 1610], and which did not elect to acquire a former reserve under section 19(b) of such Act [43 U.S.C. 1618(b)], all of the right, title, and interest of the United States in and to the surface estate in the township or townships withdrawn pursuant to section 11(a)(2) of such Act [43 U.S.C. 1610(a)(2)] in which all or any part of such village is located: *Provided*, That any such land reserved to or selected by the State of Alaska under the Acts of March 4, 1915 (38 Stat. 1214), as amended, January 21, 1929 (45 Stat. 1091), as amended, or July 28, 1956 (70 Stat. 709), and lands selected by the State which have been tentatively approved to the State under section 6(g) of the Alaska Statehood Act and as to which the State, prior to December 18, 1971, had conditionally granted title to, or contracts to purchase, the surface estate to third parties, including cities and boroughs within the State, and such reservations, selections, grants, and contracts had not expired or been relinquished or revoked by December 2, 1980, shall not be conveyed by operation of this paragraph: *And provided further*, That the provisions of subparagraph (1)(B) of this subsection shall apply to the conveyances under this paragraph.

(3) Subject to valid existing rights and section 1633(a) of this

title, there is hereby conveyed to and vested in each Village Corporation which, by December 2, 1980, is determined by the Secretary to be eligible under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] to, and has elected to, acquire title to any estate pursuant to section 19(b) of the Alaska Native Claims Settlement Act [43 U.S.C. 1618(b)], all of the right, title, and interest of the United States in and to the estates in a reserve, as such reserve existed on December 18, 1971, which was set aside for the use or benefit of the stockholders or members of such Corporation before December 18, 1971. Nothing in this paragraph shall apply to the Village Corporation for the Native village of Klukwan, which Corporation shall receive those rights granted to it by the Act of January 2, 1976 (Public Law 94-204) as amended by the Act of October 4, 1976 (Public Law 94-456).

* * *

§ 1642. Land conveyances

Solely for the purpose of bringing claims that arise from the discharge of oil, the Congress confirms that all right, title, and interest of the United States in and to the lands validly selected pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by Alaska Native corporations are deemed to have vested in the respective corporations as of March 23, 1989. This section shall take effect with respect to each Alaska Native corporation only upon its irrevocable election to accept an interim conveyance of such land and notice of such election has been formally transmitted to the Secretary of the Interior.

Alaska Native Claims Settlement Act Amendments of 1987 (uncodified)
Pub.L. 100-241, §§ 2, 17, Feb. 3, 1988, 101 Stat. 1788, 1814:

Sec. 2. The Congress finds and declares that--

(1) the Alaska Native Claims Settlement Act [this chapter] was enacted in 1971 to achieve a fair and just settlement of all aboriginal land and hunting and fishing claims by Natives and Native groups of Alaska with maximum participation by Natives in decisions affecting their rights and property;

(2) the settlement enabled Natives to participate in the subsequent expansion of Alaska's economy, encouraged efforts to address serious health and welfare problems in Native villages, and sparked a resurgence of interest in the cultural heritage of the Native peoples of Alaska;

(3) despite these achievements and Congress's desire that the settlement be accomplished rapidly without litigation and in conformity with the real economic and social needs of Natives, the complexity of the land conveyance process and frequent and costly litigation have delayed implementation of the settlement and diminished its value;

(4) Natives have differing opinions as to whether the Native Corporation, as originally structured by the Alaska Native Claims Settlement Act [this chapter], is well adapted to the reality of life in Native villages and to the continuation of traditional Native cultural values;

(5) to ensure the continued success of the settlement and to guarantee Natives continued participation in decisions affecting their rights and property, the Alaska Native Claims Settlement Act [this chapter], must be amended to enable the shareholders of each Native Corporation to structure the further implementation of the settlement in light of their particular

circumstances and needs;

(6) among other things, the shareholders of each Native Corporation must be permitted to decide--

(A) when restrictions on alienation of stock issued as part of the settlement should be terminated, and

(B) whether Natives born after December 18, 1971, should participate in the settlement;

(7) by granting the shareholders of each Native Corporation options to structure the further implementation of the settlement, Congress is not expressing an opinion on the manner in which such shareholders choose to balance individual rights and communal rights;

(8) no provision of this Act [see Short title of 1988 Amendment note under this section] shall--

(A) unless specifically provided, constitute a repeal or modification, implied or otherwise, of any provision of the Alaska Native Claims Settlement Act [this chapter]; or

(B) confer on, or deny to, any Native organization any degree of sovereign governmental authority over lands (including management, or regulation of the taking, of fish and wildlife) or persons in Alaska; and "(9) the Alaska Native Claims Settlement Act [this chapter] and this Act [see Short Title of 1988 Amendment note under this section] are Indian legislation enacted by Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs.

* * *

Sec. 17. (a) No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987) [see Short Title of 1988 Amendment note under this section], exercise of authority pursuant to this Act, or change made by, or pursuant

to, this Act in the status of land shall be construed to validate or invalidate or in any way affect--

"(1) any assertion that a Native organization (including a federally recognized tribe, traditional Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 1987), as amended) [section 461 et seq. of Title 25, Indians] has or does not have governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or persons within the boundaries of the State of Alaska, or

"(2) any assertion that Indian country (as defined by 18 U.S.C. 1151 [section 1151 of Title 18, Crimes and Criminal Procedure] or any other authority) exists or does not exist within the boundaries of the State of Alaska.

"(b) Nothing in the Alaska Native Claims Settlement Act Amendments of 1987 (or any amendment made thereby) shall be construed--

"(1) to diminish or enlarge the ability of the Federal Government to assess, collect, or otherwise enforce any Federal tax, or

"(2) to affect, for Federal tax purposes, the valuation of any stock issued by a Native Corporation."

Amendments to Alaska Native Claims Settlement Act of 1971

Pub. L. No. 93-153, § 407(a)(b), 87 Stat. 591 (1973);

Pub. L. No. 94-204, 89 Stat. 1145 (1976);

Pub. L. No. 94-273, § 38, 90 Stat. 380 (1976);

Pub. L. No. 94-456, §§ 1, 3, 4, 90 Stat. 1934 (1976);

Pub. L. No. 95-178, 91 Stat. 1369 (1977);

Pub. L. No. 95-600, § 541, 92 Stat. 2887 (1978);

Pub. L. No. 96-55, § 2, 93 Stat. 386 (1979);

Pub. L. No. 96-311, 94 Stat. 947 (1980);

Pub. L. No. 96-487, §§ 901-911, 1401-1437, 94 Stat. 2430, 2491 (1980);

Pub. L. No. 97-468, § 606(d), 96 Stat. 2566 (1983);

Pub. L. No. 99-96, 99 Stat. 460 (1985);

Pub. L. No. 99-258, 100 Stat. 42 (1986);

Pub. L. No. 99-396, § 22, 100 Stat. 846 (1986);

Pub L. No. 99-500, § 101(h), 100 Stat. 1783-286 (1986);

Pub. L. No. 99-591, § 101(h), 100 Stat. 3341-287 (1986);

Pub. L. No. 99-644, 100 Stat 3581 (1986);

Pub. L. No. 100-202, § 101(j), 101 Stat. 1329-318 (1987);

Pub. L. No. 100-241, 101 Stat. 1788 (1988);

Pub. L. No. 100-395, 102 Stat. 979 (1988);

Pub. L. No. 100-581, § 218, 102 Stat. 2942 (1988);

Pub. L. No. 101-378, § 301, 104 Stat. 471 (1990);

Pub. L. No. 101-511, § 8133(a), 104 Stat. 1909 (1990);

Pub. L. No. 102-154, § 320, 105 Stat. 1036 (1991);

Pub. L. No. 102-201, § 301, 105 Stat. 1633 (1991);

Pub. L. No. 102-415, 106 Stat. 2112 (1992);

Pub. L. No. 103-204, § 32(b), 107 Stat. 2413 (1993);

Pub. L. No. 103-437, § 16(a)(5), 108 Stat. 4594 (1994);

Pub. L. No. 104-10, 109 Stat. 155 (1995);

Pub. L. No. 104-42, 109 Stat. 353 (1995).

Federal statutes dealing with Alaska Native villages as possessed of territorial jurisdiction in their communities

7 U.S.C. § 5930 (repealed) & note (*as amended by* Pub. L. 102-237, sec. 932(3), 105 Stat. 1906) -- Providing Alaska Native villages with the same rights as other Indian tribes to obtain grants to establish education programs to promote more efficient subsistence farming practices "on Indian reservations and tribal jurisdictions" under the Agriculture Extension Service's subsistence farming education and grant program [including Settlement Act lands by reference to 25 U.S.C. § 1452(d)];

12 U.S.C. §§ 1701, 4702(11)(12), -- Defining "Indian reservation" to include Settlement Act lands and other areas of "Indian country" (by reference to 25 U.S.C. § 1903 (10)) for purposes of the Community Development Financial Institutions Act;

13 U.S.C. §§ 181, 184(1) -- Treating "Alaska Native village" as a "local unit of general purpose government" under the Census Act;

16 U.S.C. §§ 470, 470a(d)(2), 470w(4), 470w(14) -- Providing assistance in conservation of historic sites, buildings, objects and antiquities; authorizing Indian tribes, including any "native village," to assume the functions of a State Historic Preservation Officer with respect to "tribal lands," including "dependent Indian communities";

16 U.S.C. §§ 1721(b)(2), 1722(5)-(7), 1723(d), 1729(a)(1) -- Treating recognized Alaska Native villages the same as Indian

tribes and treating Settlement Act lands the same as reservation, allotment or dependent Indian community Indian country lands for purposes of participating in natural and cultural conservation projects authorized by the Public Lands Corps Act of 1993; providing for tribal approval of all public land corps conservation projects occurring on such "Indian lands;" and eliminating cost-sharing requirements for approval of projects carried out on Indian lands;

16 U.S.C. §§ 4301, 4302(3)-(4), 4305, 4305(d) -- Protecting caves located on lands held by Indian tribes, including Alaska Native villages; and authorizing the Secretary of the Interior to delegate federal permitting authority to Indian tribes and Alaska Native villages to regulate activities in caves located within Indian lands under the Federal Cave Resources Protection Act of 1988;

20 U.S.C. §§ 1101(b), 1106b(c)(7) -- In selecting members to participate in the joint State-Federal Teacher Corps program, special consideration is given to individuals who "intend to teach on Indian reservations or in Alaska Native villages";

20 U.S.C. §§ 3282, 3292 -- Making certain bilingual education programs available to recognized Alaska Native tribes where local schools in their communities are operated predominantly for Alaska Native children.

20 U.S.C. §§ 7701, 7704, 7713 -- Defining "Indian lands" in connection with the payment of federal impact aid to local educational agencies to include lands conveyed under ANCSA to a Native individual, Native group, village or regional corporation; lands held in trust by the United States for individual Indians or Indian tribes; and land held by individual Indians or Indian tribes subject to restrictions or alienation

imposed by the United States;

23 U.S.C. § 101 -- Placing Alaska Native villages on the same footing as Indian reservations with respect to federal highway funding under the National Highway System Designation Act of 1995;

25 U.S.C. §§ 1301(1), (2), (4) -- Acknowledging that the "power of self-government" of any recognized Indian tribe "means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians [in Indian country]," with no exclusion for Alaska.

25 U.S.C. §§ 1451, 1452(c)-(d), 1466, 1481, 1495 -- Authorizing tribes, including recognized Alaska Native villages, access to revolving loan fund, loan guaranty and loan insurance programs established under the Indian Financing Act of 1974, and providing that title to land purchased with loan funds on a "reservation" (including Settlement Act lands) "may be taken in trust";

25 U.S.C. § 1644(a) -- Authorizing the Secretary of the Interior to make grants or enter into contracts to assist "tribal organizations" in establishing health care assistance programs "on or near Federal Indian reservations and trust areas and in or near Alaska Native villages";

25 U.S.C. §§ 2402, 2403(3) -- Including recognized Alaska Native villages among tribes benefitting from the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (including tribal law enforcement training, 25 U.S.C. §§ 2441-2455) enacted in furtherance of the Federal government's "historical relationship and unique legal and moral responsibility to Indian tribes" and the treaty, statutory and

historical obligation to assist the Indian tribes in meeting the health and social needs of their members," 25 U.S.C. §§ 2401(1)-(2);

25 U.S.C. § 2801(4)-(5) -- Mandating BIA assistance for all tribal law enforcement services in "Indian country" with no exclusion for Alaska;

25 U.S.C. §§ 2901, 2902(5)-(8) -- Including within the scope of tribes and reservations recognized Alaska Native villages and Settlement Act lands (by reference to 25 U.S.C. § 1452) in connection with the Native American Languages Act;

25 U.S.C. § 3001(7)-(15) -- Including within the scope of tribes and tribal lands recognized Alaska Native villages and "dependent Indian communities" in connection with the protection of Native American human remains and objects situated on tribal lands (25 U.S.C. § 3002) and the repatriation of Native American human remains and funerary objects (25 U.S.C. § 3005);

25 U.S.C. §§ 3102, 3112 -- Authorizing Self-Determination Act contracts with recognized Alaska Native villages (by reference to 25 U.S.C. § 450b(e)) to carry out the Secretary's duty to "establish a program of technical assistance . . . to promote the sustained yield management" of forest resources belonging to Settlement Act corporations, in consultation with those corporations;

25 U.S.C. §§ 3201(b), 3202(9), 3208 -- Treating Settlement Act lands the same as Indian reservation lands in connection with tribal child abuse treatment grant programs funded under the Indian Child Protection and Family Violence Prevention Act;

25 U.S.C. §§ 3601, 3602(3) -- Recognizing the federal trust responsibility to each tribal government, including "any Alaska Native entity which administers justice under its inherent authority or the authority of the United States," and establishing a regime of federal support for those systems under the Indian Tribal Justice Act;

25 U.S.C. §§ 3702, 3703(9)--(10) -- Including Alaska Native villages in the programs of the American Indian Agricultural Resources Management Act with respect to qualifying "Indian land;"

25 U.S.C. §§ 3901, 3902(3)-(6) -- Treating Settlement Act lands and "any Alaska Native village" identically to Indian country lands of other recognized tribes as part of an initiative to inventory and close open dumps and to address solid waste disposal needs on such lands;

26 U.S.C. §§ 45A(c)(6)-(7), 168(j)(6) -- Establishing an Indian employment credit for wages paid to tribal members where "substantially all of the services performed" are within any Indian reservation and the employee resides on or near the reservation, and defining "reservation" to include Settlement Act lands (by reference in 26 U.S.C. § 168(j)(6) to 25 U.S.C. § 1452(d));

26 U.S.C. § 4225 -- Providing a federal tax exemption for "native Indian handicraft" manufactured or produced . . . on Indian reservations . . . or by Indians under the jurisdiction of the United States Government in Alaska";

29 U.S.C. §§ 720(a), 750(c) -- Making handicapped Native Americans residing on a "reservation," including on Settlement Act lands, eligible beneficiaries for special vocational rehabilitation grant programs administered by Alaska Native villages and other Indian tribes;

29 U.S.C. §§ 1782, 1782a(b), 1782h(1)(C) -- Treating Alaska Native village[s] and Indian reservations the same in connection with Youth Fair Chance Program grants;

29 U.S.C. § 1783(g)(2) -- Treating "Alaska Native village[s]" and Indian reservations identically to states in connection with the Microenterprise Grants Program;

29 U.S.C. § 1784b(1) -- Treating communities operating on Indian reservations or "Alaska Native village[s]" as "unit[s] of general local government" eligible to receive and administer emergency funding under the Disaster Relief Employment Assistance program;

42 U.S.C. § 682(i) (repealed) -- Authorizing Alaska Native villages (by reference to 25 U.S.C. § 450b(e)) to administer job opportunities and basic skills training programs for Alaska Natives residing in "the boundaries . . . of the geographic region, established pursuant to [43 U.S.C. § 1606(a) of the 1971 Settlement Act] within which the Alaska Native organization is located (without regard to the ownership of the land within the boundaries);"

42 U.S.C. §§ 1437a(b)(9)-(12), 1437aa (repealed), 1437aaa -- Including members of any "tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives" in HUD low-income housing program, and including Indian housing

authorities established either under tribal or state law to operate HUD's low income material help home ownership programs within an "Indian area" in the same manner as on a reservation;

42 U.S.C. §§ 1471(a)(b)(6) -- Defining "Indian tribe" to include Alaska Native villages in connection with financial assistance for farm housing;

42 U.S.C. §§ 1973aa-1a(a)(b)(2)(A), (3)(C) -- Defining "Indian reservation" to include "American Indian or Alaska Native area[s]" as those terms are defined by the Census Bureau in the 1990 census for purposes of enforcing federal bilingual election requirements;[1]

42 U.S.C. §§ 3001, 3002(6)-(7), 3022(2)(B), 3057, 3058aa -- Authorizing Alaska Native villages to operate Health and Human Services programs benefitting "older Americans" residing in their communities on the same basis as any other Indian tribe, and to be treated as a "unit of general purpose local government;"

42 U.S.C. §§ 3796dd(a), (d), 3796dd-8 -- Including "Indian tribal governments" of "an Alaska Native village" among tribes eligible to administer "cops on the beat" law enforcement grants, on the same basis as states and other units of local government;

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[1] In the absence of "legally designated boundaries" for all Native villages, the Bureau of Census has "delineate[d] boundaries that encompass the settled area associated with each ANV [Alaska Native Village]" that is "recognized pursuant to [the Settlement Act]," doing so in cooperation with "knowledgeable officials." 1990 CENSUS REPORT at A-2. *See also, id.* at 22-24 (Table 13), 25-27 (Table 14), 169-192 (Table 80) and 193-215 (Table 81) (reporting census data analyses for each Alaska Native village).

42 U.S.C. §§ 3796gg, 3796gg-2(3) -- Including Indian tribal governments of "any Alaska Native village" to administer grants to combat violence against women, on the same basis as states and other units of local government;

42 U.S.C. § 4368b -- Including "any Alaska Native village" among tribes and intertribal consortia eligible to receive EPA grants to support and build their capacities to administer environmental regulation programs on "Indian lands;"

42 U.S.C. § 5061(5) -- Including recognized Alaska Native villages as "public agencies or organizations" authorized to carry out programs in their communities under the Domestic Volunteer Service Act;

42 U.S.C. §§ 5121, 5122(6) -- Including any Alaska Native village as a "local government" under the Disaster Relief Act;

42 U.S.C. §§ 5301, 5302(a)(17), 5306 -- Including reorganized Alaska Native villages as tribes eligible to receive Housing and Urban Development Act grants for a broad range of purposes, including *inter alia* the acquisition of real property, construction of public works, code enforcement in deteriorating areas, various housing programs, and the provision of public services "including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs," section 5305(a), and in section 5318(n) making a recognized tribe "located . . . in an Alaska Native village" eligible to receive urban development action grants to relieve "severe economic distress to help stimulate economic development;"

42 U.S.C. §§ 6701, 6702, 6707(a)(1), 6707(h)(2)(B) -- Alaska Native villages, like other tribes, eligible for direct grants for

construction, renovation or improvement of local public works projects;

42 U.S.C. §§ 6721, 6722, 6723(c)(3) -- Providing that "the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions" is eligible for financial assistance to coordinate budget-related actions with Federal efforts to stimulate economic recovery;

42 U.S.C. §§ 8801, 8802(12), (17) -- Providing assistance in the development of biomass energy and alcohol fuels available to recognized tribes, including Alaska Native villages; and

42 U.S.C. §§ 10101, 10121 -- Indian tribes, including Alaska Native villages, are (like states) entitled to participate and consult with federal authorities on the handling and disposal of nuclear waste if their lands are "affected" by being proposed as a site for nuclear waste disposal;

42 U.S.C. §§ 11471, 11472 -- Set-asides for the job training demonstration program and the emergency community services homeless program available to recognized Indian tribes, including any Alaska Native village.

42 U.S.C. § 13791 -- Authorizing the Attorney General to award grants to "an Alaska Native village" for youth services and supervision programs in "Indian country" to provide extra-curricular, academic and supervised sports programs in poverty areas and areas of significant juvenile delinquency;

42 U.S.C. § 13801 -- Authorizing the Attorney General to award grants to an "Alaska Native village" for delinquent and at-risk youth residential services program;

42 U.S.C. §§ 13861, 13868 -- Authorizing the Attorney General to award grants to "an Alaska Native village" to "support[ ] the creation or expansion of community-based justice programs" specified in section 13862;

42 U.S.C. § 13911 -- Authorizing the Attorney General to develop guidelines for Indian tribal correctional institutions (including those of "an Alaska Native village") to address inmate tuberculosis (TB), and to award tribal grants for inmate TB programs;

42 U.S.C. § 13971 -- Authorizing the Attorney General to award grants to "an Alaska Native village" to coordinate among law enforcement officers, prosecutors and advocacy groups the investigation of domestic violence and child abuse (as well as treatment and prevention initiatives);

42 U.S.C. § 14151 -- Authorizing the Attorney General to award grants to "an Alaska Native village" to "improve[ ] criminal justice agency efficiency through computerized automation and technological improvements," and to expand and improve investigative and managerial training courses for tribal law enforcement agencies.

Additional federal statutes dealing with Alaska Native village tribes on an equal basis with other federally recognized tribes

5 U.S.C. § 3371(2)(C) -- Treating Alaska Native villages the same as other Indian tribes regarding the assignment of federal personnel to work for tribal governments under the Intergovernmental Personnel Act;

7 U.S.C. §§ 2279(a)(1) and (2)(B) -- Making Alaska Native cooperative colleges eligible to receive assistance grants and contracts to further the goals of the Socially Disadvantaged Farmers and Ranchers program;

12 U.S.C. § 1715z-13(a)(1), (i) -- Authorizing special federal mortgage insurance for mortgages executed by Alaska Native tribes with respect to property situated on ANCSA land or other Alaska Native acquired lands;

15 U.S.C. §§ 631, 637(a)(13) -- Making the tribal minority contractor provisions of the Small Business Act available to Alaska Native villages;

16 U.S.C. §§ 470aa, 470bb -- Programs for archaeological resources protection;

16 U.S.C. §§ 1362(23), 1386(d), 1387(f)(6)(C) -- Requiring the Secretary of Commerce to include representatives of Alaska Native organizations, along with representatives of other Indian tribes and state governors, on scientific review panels and "take reduction" committees responsible for monitoring and protecting the marine mammal populations within their respective regions under the Marine Mammal Protection Act of

1994;

18 U.S.C. § 1159(c)(3) -- Treating recognized Alaska Native villages the same as other Indian tribes with respect to federal criminal penalties imposed for misrepresentation of Indian produced goods and products.

20 U.S.C. §§ 80q(6)-(8), 80q-9(a)-(d), 80q-10(a)-(c), 80q-12(a), 80q-13(a), 80q-14(8) -- Acknowledging the longstanding concern of Indian tribes, including recognized Alaska Native villages, over the mistreatment of Indian and Alaska Native human remains and funerary objects, providing for the inventory, identification and return of such remains and objects in consultation with tribal government officials under the direction of a special review committee consisting of tribal representatives; and authorizing the Secretary of the Interior to award grants to Indian tribes, including Alaska Native villages to assist them in carrying out agreements for the return of human remains and artifacts and for the improvement of tribal museums, cultural centers and archives;

20 U.S.C. §§ 351a, 351c -- Making recognized Alaska Native villages and other Indian tribes eligible, on the same basis as state governments, to receive federal funding to improve and expand library services to tribal areas without such services;

20 U.S.C. §§ 1400, 1401, 1411(f), 1484 -- Requiring that Indian tribes, including recognized Alaska Native villages, participate in the decision-making process regarding federal programs and funding for the education of disabled Native American children;

20 U.S.C.A. §§ 6102, 6103 -- Including Alaska Native villages among federally recognized Indian tribes eligible to participate

in the school-to-work opportunities, bilingual education, and related language programs;

20 U.S.C. §§ 4401, 4402(5) -- Including Alaska Native villages with other Indian tribes regarding tribal involvement in the Institute of American Indian and Alaska Native Culture and Arts Development;

20 U.S.C. §§ 5501, 5502(8) -- Defining "tribal education agency" to mean schools or colleges controlled by Indian tribes, including Alaska Native villages, and making them eligible to participate in programs under the National Environmental Education Act;

20 U.S.C. §§ 5801, 5802(a)(1)-(3), 5886(g)(2) -- Requiring the involvement of tribal government officials, including officials representing Alaska Native villages, in the development of education goals and standards for American Indian and Alaska Native children under the Goals 2000: Educate American Act;

20 U.S.C.A. §§ 7402, 7404 -- Defining "Indian tribe" to include Alaska Native villages to carry out certain language education programs.

25 U.S.C. §§ 305a, 305e(d)(3)(A) -- Including recognized Alaska Native villages among tribes authorized to bring suit for misrepresentation of Indian produced goods;

25 U.S.C. §§ 450a, 450b(e) -- Including recognized Alaska Native villages among tribes eligible to operate federal Indian programs;

25 U.S.C. §§ 472, 472a(c)(1), (f)(1)(A) -- Authorizing the recognized governing body of any Alaska Native village to

waive the Indian preference laws applicable to positions within the Bureau of Indian Affairs and the Indian Health Service;

25 U.S.C. § 479 -- Authorizing "aboriginal peoples of Alaska" to reorganize their tribal governments under the Indian Reorganization Act;

25 U.S.C. §§ 1212, 1214 -- Reconfirming the government-to-government relationship between the United States and Alaska Native tribes;

25 U.S.C. §§ 1602, 1603 -- Including recognized Alaska Native villages among tribes benefitting from the Indian Health Care Improvement Act;

25 U.S.C. §§ 2001, 2026(14) -- Including "any Alaska Native village" among tribes participating in various BIA education programs;

25 U.S.C. §§ 2502, 2505, 2511(2) -- Authorizing a tribe, including "any Alaska Native village," to receive grants to help defray the expenses of operating "tribally controlled schools";

25 U.S.C. §§ 3501(2), 3502 -- Providing Alaska Native villages with the same rights as other Indian tribes to consult with federal officials and receive loans and program support to promote energy resource development on tribal lands under of the Indian Energy Resources Act;

25 U.S.C. § 4001(2), 4021 -- Including any Alaska Native village within the scope of the American Indian Trust Fund Management Reform Act regarding accountings of trust funds, and tribal management of trust fund programs.

29 U.S.C. §§ 701, 706 (21) -- Provision of vocational rehabilitation and other rehabilitation services under the Rehabilitation Act;

29 U.S.C. §§ 1671(a)-(b), 1671(c)(1)(A) -- Alaska Native village tribal participation in comprehensive training and employment programs established under the Job Training Partnership Act;

31 U.S.C. § 7501(9), (19) -- Defining, with respect to the single-audit requirement for state and local governments, "State" to include any Indian tribe, including any Alaska Native village;

33 U.S.C. §§ 2701(15), 2706(b)(4) -- Authorizing Alaska Native village tribes to serve as natural resource trustees in connection with oil spills affecting lands "belonging to, managed by, controlled by, or appertaining to such Indian tribe" (Oil Pollution Act);

38 U.S.C. §§ 3100, 3115(c) -- Authorizing the Secretary to use facilities of any Indian Tribe, including "any Alaska Native village," in connection with the veterans' vocational rehabilitation program;

42 U.S.C. §§ 4950, 5061(5) -- Including recognized Alaska Native villages as "public agencies or organizations" to carry out programs under the Domestic Volunteer Services Act.

42 U.S.C. § 280d(a)(d)(4), (o)(3) -- Including "any Alaska Native village" as an Indian tribe eligible to administer grants for services for children of substance abusers;

42 U.S.C. §§ 629, 629a(a)(6) -- Including Alaska Native

villages as tribes to operate family preservation and support services;

42 U.S.C. § 1996a(a), (c) -- Including "any Alaska Native village" among tribes (and their members) to be protected under the American Indian Religious Freedom Act;

42 U.S.C. §§ 2991b(d)(1)-(2), 2991f(a)-(c), 2992c(2) -- Authorizing administration for Native Americans to fund various environmental and Defense Department environmental mitigation initiatives on ANCSA lands "under the jurisdiction" of a federally-recognized Native village;

42 U.S.C. §§ 4701, 4762(5) -- Including the "recognized governing body of . . . any Alaska Native village . . . which performs substantial governmental functions" among the "local governments" and "general local governments" to receive grants, training and development opportunities under the Intergovernmental Personnel Act;

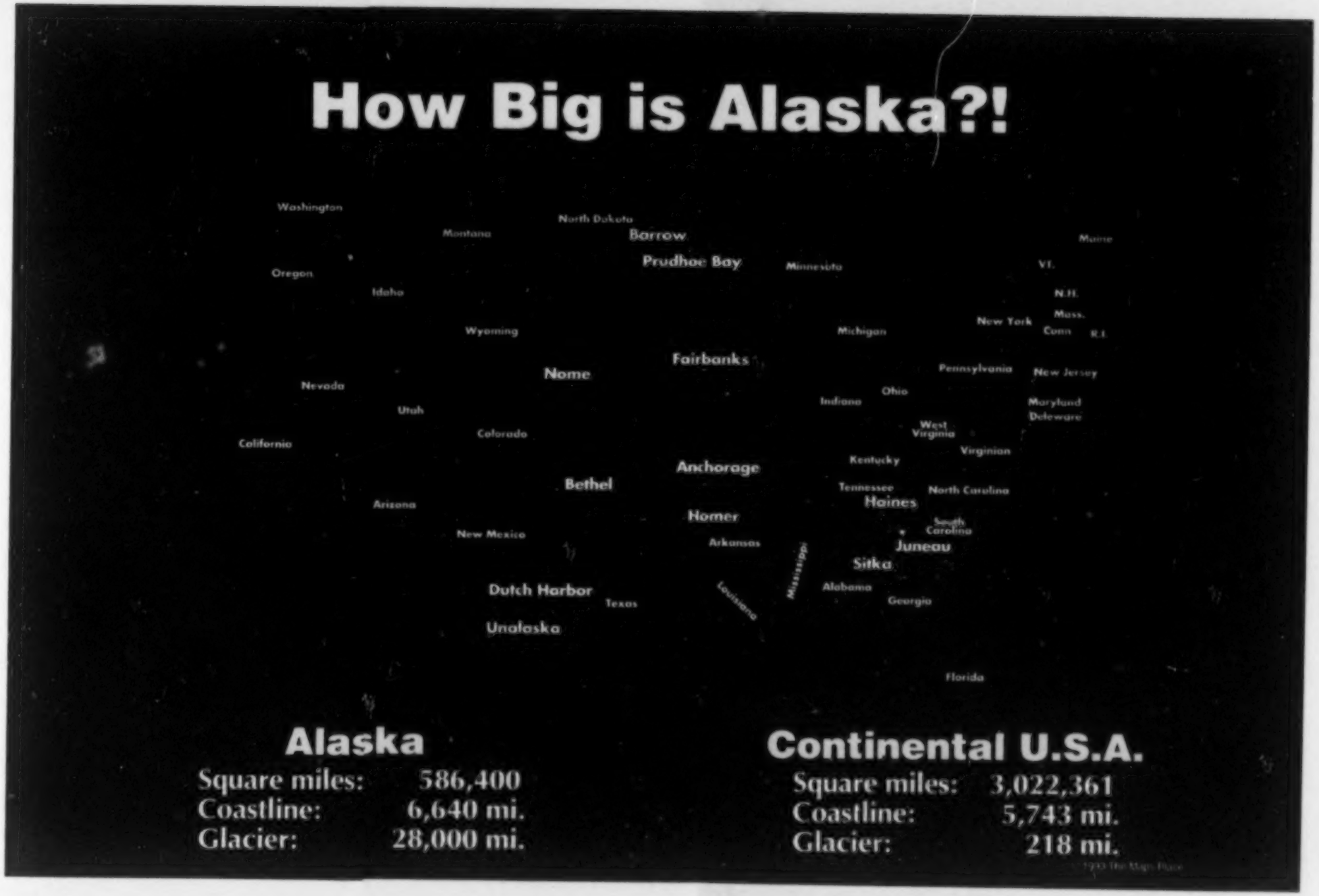
42 U.S.C. § 7601(d), 7602(r) -- Treating Alaska Native village tribes "exercising substantial governmental duties and powers" over any "area within the tribe's jurisdiction" on an equal footing with states in connection with the Clean Air Act;

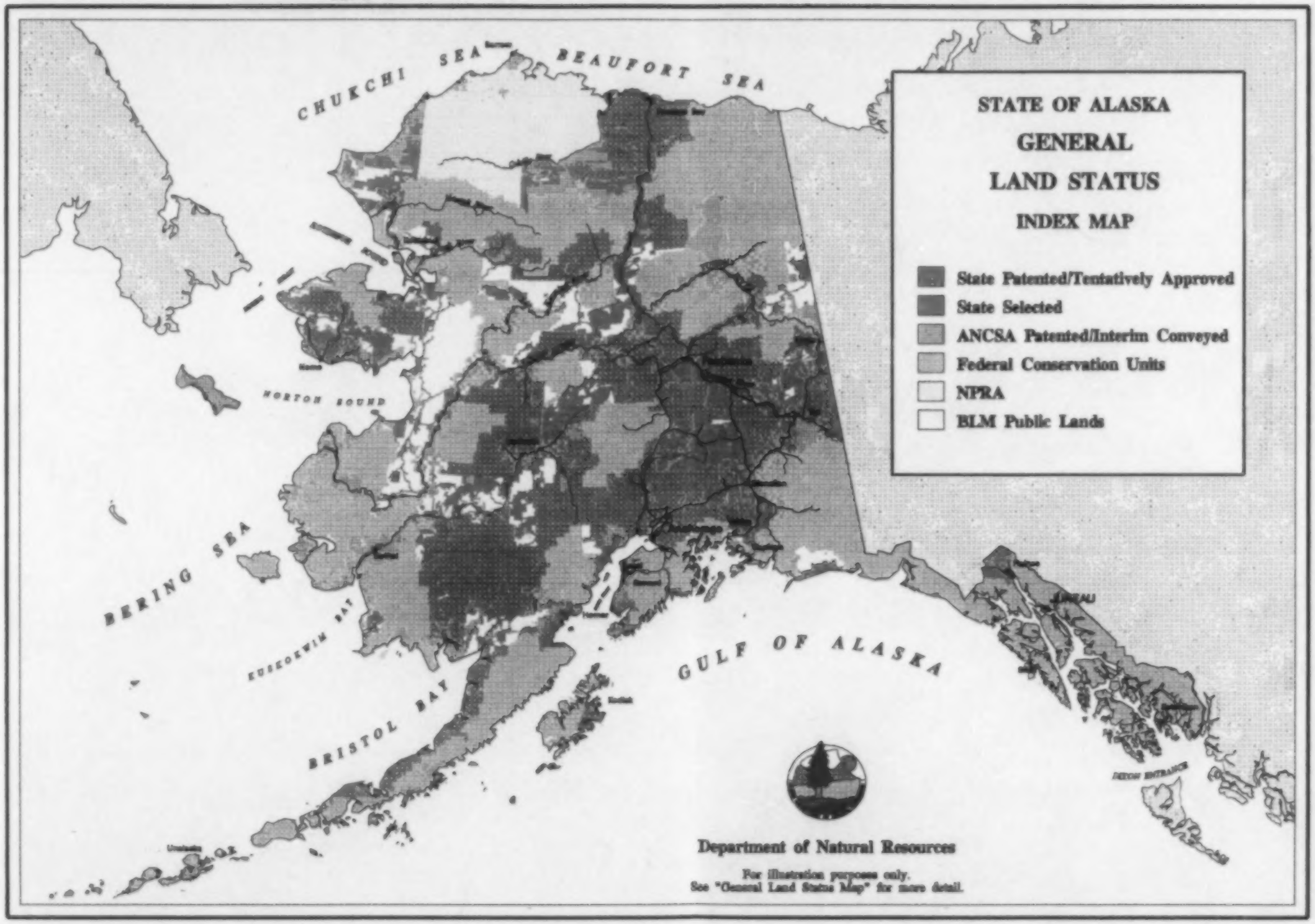
42 U.S.C. §§ 9601(36), 9626 -- Treating Alaska Native village tribes as states in connection with various environmental regulation activities involving hazardous materials (Comprehensive Environmental Response Compensation and Liability Act);

42 U.S.C. §§ 9831, 9832(10) -- Making Indian tribes, including "any Native village" eligible to operate Head Start programs;

42 U.S.C. §§ 11301, 11472 -- Set-asides for job training demonstration programs and the emergency community services homeless program available to recognized Indian tribes, including any Alaska Native village;

42 U.S.C. §§ 13741, 13742, 13743 -- Authorizing the Ounce of Prevention Council to make grants to Alaska Native villages for after school mentoring, tutoring, and job placement programs, and programs to reduce substance abuse, child abuse, and adolescent pregnancy.


How Big is Alaska?!
Washington
Montana
North Dakota
Barrow
Prudhoe Bay
Minnesota
Maine
Vt.
N.H.
Mass.
R.I.
Conn
New York
Oregon
Idaho
Wyoming
Michigan
Fairbanks
Nome
Pennsylvania
New Jersey
Nevada
Utah
Ohio
Indiana
Maryland
Deleware
West Virginia
Virginian
Kentucky
California
Colorado
Anchorage
Bethel
Tennessee
North Carolina
Haines
Arizona
Homer
South Carolina
New Mexico
Arkansas
Juneau
Sitka
Mississippi
Louisiana
Alabama
Georgia
Dutch Harbor
Texas
Unalaska
Florida
Alaska
Square miles: 586,400
Coastline: 6,640 mi.
Glacier: 28,000 mi.
Continental U.S.A.
Square miles: 3,022,361
Coastline: 5,743 mi.
Glacier: 218 mi.



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